# *Πολιτιστική Κληρονομιά και Ανθρώπινα Δικαιώματα. Η περίπτωση της Κύπρου.*

Διπλωματική Διατριβή για το ΠΜΣ στην Πολιτιστική Διαχείριση.

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Ιούνιος 2012

## ΠΙΝΑΚΑΣ ΠΕΡΙΕΧΟΜΕΝΩΝ

# ΕΙΣΑΓΩΓΗ

*«...damage to or disappearance of each and every piece of cultural or natural heritage represents an impoverishment of heritage of all peoples in the world...»*

Διακήρυξη 10ης Συνόδου UNESCO
αρχηγών κρατών ΝΑ Ευρώπης
[Μοστάρ, 3 Ιουνίου 2012].

Η παρούσα εργασία, εκκινώντας από τη διαλεκτική επί των συσχετισμών του ζητήματος της προστασίας της Πολιτιστικής Κληρονομιάς με το ζήτημα της προστασίας των Ανθρωπίνων Δικαιωμάτων στην περίπτωση της Κύπρου, επιχειρεί εν τέλει να καταθέσει μία διαφορετικού τύπου πρόταση πολιτικής. Μια πρόταση άσκησης *ήπιας ισχύος*, η οποία όμως, εάν και εφόσον πραγματοποιηθεί σωστά, υπό τους όρους και τις προϋποθέσεις επιτυχίας ενός στρατηγικού εγχειρήματος υψηλής ευαισθησίας και εξίσου υψηλής προτεραιότητας, ενέχει προοπτικές ισοδύναμες πολυδάπανης επικοινωνιακής εκστρατείας.

Στην περίπτωση του Κυπριακού ζητήματος, το σύνηθες σφάλμα που διαπράττεται τόσο από τους μελετητές σε θεωρητικό/ακαδημαϊκό επίπεδο όσο και από την πλειοψηφία των παραγόντων που με τον τάδε ή δίνα τρόπο εμπλέκονται στη διαδικασία επίλυσής του, είναι ότι όλη η διαλεκτική εξαντλείται στις πολιτικές και νομικές –βάσει Διεθνούς Δικαίου- διαστάσεις του προβλήματος, ως ακρογωνιαίων λίθων των διπλωματικών διαπραγματεύσεων. Ωστόσο, την ίδια στιγμή, η ανθρωπιστική διάσταση της τουρκικής εισβολής και κατοχής, συμπεριλαμβανομένων ασφαλώς των βανδαλισμών, **από μόνη της** αποτελεί ισχυρότατο τεκμήριο μιας εγκληματικής στρατηγικής, η οποία υλοποιείται μεθοδικά και με την σιωπηρή ανοχή της διεθνούς κοινότητος τα τελευταία 37 χρόνια τουλάχιστον.

Εν προκειμένω, λοιπόν, προτεινόμενο εργαλείο ανάσχεσης μιας τέτοιας στρατηγικής, με τους ίδιους όρους που τη συντηρεί και την αναπαράγει επικοινωνιακά η Τουρκία όλα αυτά τα χρόνια, είναι η άσκηση ευφυούς και στοχευμένης *Πολιτιστικής* Διπλωματίας: ήτοι άσκησης ενός εξειδικευμένου τύπου *Δημόσιας* Διπλωματίας, ο οποίος, μέσω της ενεργοποίησης πολιτιστικών παραμέτρων, στοχεύει αφενός μεν στην ευρύτερη δυνατή ενημέρωση της διεθνούς κοινής γνώμης ως προς τις πραγματικές επιπτώσεις της Τουρκικής κατοχής στην Κύπρο, αφετέρου, στην καλλιέργεια θετικής ανταπόκρισης της διεθνούς κοινότητας

προς την Κύπρο στο εν λόγω ζήτημα, τόσο σε επίπεδο διακυβερνητικό, όσο και σε επίπεδο διεθνούς Κοινωνίας των Πολιτών.

Η παρούσα εργασία διαιρείται σε τρεις ενότητες: Στην πρώτη ενότητα σκιαγραφείται η έννοια και η βαρύτητα των Πολιτιστικών Δικαιωμάτων στο πλαίσιο της διεθνούς προστασίας των Ανθρωπίνων Δικαιωμάτων, καθώς και το ζήτημα των καταστροφών της Πολιτιστικής Κληρονομιάς ως παραβιάσεων οικουμενικού χαρακτήρος, του Διεθνούς Ανθρωπιστικού Δικαίου. Η δεύτερη ενότητα είναι αφιερωμένη στην πολιτιστική και αμιγώς ανθρωπιστική διάσταση της τουρκικής εισβολής και κατοχής στην Κύπρο. Στην ενότητα αυτή συνοψίζονται οι βασικές παράμετροι της επικρατούσας κατάστασης στην Κύπρο από το 1974 μέχρι τις ημέρες μας, σε όρους καταστροφών πολιτιστικής κληρονομιάς και παραβιάσεων ανθρωπίνων δικαιωμάτων, έτσι ώστε να καταστούν σαφή τα επιχειρήματα που δύνανται και πρέπει να χρησιμοποιούνται κατά την άσκηση Πολιτιστικής Διπλωματίας από την πλευρά της Κύπρου. Στην τελευταία ενότητα αναφέρονται επιγραμματικά οι βασικότερες αδυναμίες που παρατηρούνται κατά την άσκηση *παραδοσιακής διπλωματίας* και παρουσιάζεται ο τρόπος με τον οποίο η ευφυής άσκηση *πολιτιστικής διπλωματίας* στην περίπτωση της Κύπρου θα μπορούσε να καλύψει τις αδυναμίες αυτές.

Ωστόσο επί του παρόντος και υπό το φως των τελευταίων εξελίξεων στο Κυπριακό ιδίως ως προς την μη διαλλακτική στάση της Τουρκίας και τις συνεχιζόμενες καταπατήσεις των κανόνων του Ευρωπαϊκού και Διεθνούς Δικαίου εκ μέρους της, -πολλούς από τους οποίους τυπικά/θεωρητικά έχει αποδεχθεί με την υπογραφή ή/και επικύρωσή τους-, ομολογουμένως μία πρόταση άσκησης Πολιτιστικής Διπλωματίας ενδεχομένως να φαντάζει αφελής. Τη στιγμή όμως που όλα τα υπόλοιπα τυπικά μέσα έχουν εξαντληθεί, με πενιχρά αποτελέσματα, το μόνο που απομένει είναι να δοκιμασθεί η λανθάνουσα δυναμική και ο επικοινωνιακός αντίκτυπος ενός άτυπου εργαλείου εξωτερικής πολιτικής, το οποίο, εάν ενεργοποιηθεί εγκαίρως, θα μπορούσε να καταφέρει πολύ περισσότερα από όσα έχει καταφέρει μέχρι στιγμής η παραδοσιακή διπλωματία

Νίκη Στεφανίδου
Ιούνιος 2012

## ΜΕΡΟΣ Α΄
## Πολιτιστική Κληρονομιά και Ανθρώπινα Δικαιώματα.

# Κεφάλαιο 1ον
# Τα Πολιτιστικά Δικαιώματα ως Ανθρώπινα Δικαιώματα.

*«Πολιτισμός είναι η πεμπτουσία της ανθρώπινης υπόστασης.»*
Διακήρυξη της UNESCO
για τα Πολιτιστικά Δικαιώματα, 1970

Παρ' όλο που η θεσμική διαδρομή για την τυπική αναγνώριση των Πολιτιστικών Δικαιωμάτων σε παγκόσμιο επίπεδο υπήρξε μακρά, η αποτύπωση αυτής της αναγνώρισης στο Διεθνές Δίκαιο είναι σχετικά πρόσφατη. Μόλις στα μέσα του 20ου αι., στο Άρθρο 27 της Οικουμενικής Διακήρυξης του Οργανισμού Ηνωμένων Εθνών για τα Δικαιώματα του Ανθρώπου (1948)[1], επισημαίνεται για πρώτη φορά το δικαίωμα κάθε ανθρώπου «...*να συμμετέχει ελεύθερα στην πνευματική ζωή της κοινότητας, να χαίρεται τις καλές τέχνες και να μετέχει στην επιστημονική πρόοδο και στα αγαθά της.*»

Αυτή ήταν μία έμμεση αλλά σαφής αναφορά σε μία κατηγορία ανθρωπίνων δικαιωμάτων των οποίων ο ορισμός ήταν δύσκολο να δοθεί με σαφήνεια (ενδεικτικά Logan, 2009, Patel, 2011), δεδομένου ότι το περιεχόμενό τους σχετίζεται με την συμμετοχή του ατόμου στην πολιτιστική διάδραση, καθώς και με την πολιτιστική πολυμορφία[2] -και άρα εμπεριέχει πολλές διαστάσεις που επιδέχονται πολλές διαφορετικές και συχνά αντικρουόμενες αιτιολογήσεις και ερμηνείες- και για τα οποία στη διεθνή βιβλιογραφία υφίσταται εκτενέστατη διαλεκτική ως προς την καθολικότητά ή μη της ισχύος τους (ενδεικτικά Ayton-Shenker, 1995, Zechenter, 1997,Hodder, 2010) υπό το πρίσμα του πολιτιστικού σχετικισμού[3].

Έκτοτε, τόσο στο Ευρωπαϊκό όσο και στο Διεθνές Ανθρωπιστικό Δίκαιο, ακολούθησαν πολλές αναφορές στα πολιτιστικά δικαιώματα είτε στο πλαίσιο της αναγνώρισής τους κατά τρόπο ενδεχομένως πιο σαφή και συγκεκριμένο όπως π.χ.

[1] Για το πλήρες κείμενο της Διακήρυξης, στην ελληνική, βλ.
http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=grk

[2] Βλ. σχόλια της ανεξάρτητης εμπειρογνώμονος στον τομέα των πολιτιστικών δικαιωμάτων, κας Farida Shaheed, στην Έκθεσή της (Κεφ.II) προς το Συμβούλιο Ανθρωπίνων Δικαιωμάτων του Ο.Η.Ε., τον Μάρτιο του 2010.
http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.36_en.pdf

[3] Η αναφορά στην εν λόγω διαλεκτική υπερβαίνει τους σκοπούς του παρόντος πονήματος.

στην Οικουμενική Διακήρυξη της UNESCO για την Πολιτιστική Πολυμορφία -όπου στο Άρθρο 5 αναφέρεται ρητά ότι τα πολιτιστικά δικαιώματα *αποτελούν αναπόσπαστο κομμάτι των ανθρωπίνων δικαιωμάτων τα οποία είναι οικουμενικά, αδιαίρετα και ανεξάρτητα*- είτε στο πλαίσιο της προστασίας τους, με αφορμή την προστασία της Πολιτιστικής Κληρονομιάς.

Στο πλαίσιο των εργασιών του Οργανισμού Ηνωμένων Εθνών, τα κυριότερα διεθνή κείμενα στα οποία απαντώνται τέτοιες αναφορές, είναι τα εξής:

-Σύμβαση για την Προστασία των Πολιτιστικών Αγαθών σε περίπτωση ενόπλου συρράξεως[4] [Χάγη, 1954].

Στην εν λόγω Σύμβαση, καθώς και στα συμπληρωματικά Πρωτόκολλα αυτής, από το πρώτο κιόλας Άρθρο[5] δίδεται ορισμός των πολιτιστικών αγαθών, βάσει του οποίου στη συνέχεια ορίζονται επακριβώς οι υποχρεώσεις των Συμβαλλομένων Μερών ως προς την διαφύλαξη των αγαθών αυτών.

-Διεθνής Σύμβαση των Ηνωμένων Εθνών για τα Οικονομικά, Κοινωνικά και Πολιτιστικά Δικαιώματα.[6] [1966]

Στο Άρθρο 15[7] παρ. I & II της εν λόγω Διεθνούς Συμβάσεως, επισημαίνεται το δικαίωμα του καθενός να συμμετέχει στην πολιτιστική ζωή, καθώς και η

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[4] Για το πλήρες κείμενο βλ. http://portal.unesco.org/culture/en/ev.php URL_ID=35156&URL_DO=DO_TOPIC&URL_SECTION=201.html

[5] Article 1. For the purposes of the present Convention, the term "cultural property" shall cover, irrespective oforigin or ownership:
(a) movable or immovable property of great importance to the cultural heritage of every people, such asmonuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a);
(c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments".

[6] Για το πλήρες κείμενο, βλ. http://www2.ohchr.org/english/law/cescr.htm

[7] Article 15.
1. The States Parties to the present Covenant recognize the right of everyone:
(a) To take part in cultural life;
(b) To enjoy the benefits of scientific progress and its applications;
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

υποχρέωση των Συμβαλλομένων Μερών να διασφαλίσουν την διατήρηση, εξέλιξη και διάχυση της επιστήμης και του πολιτισμού.

-Διακήρυξη της UNESCO σχετικά με τις Αρχές της Διεθνούς Πολιτιστικής Συνεργασίας.[8] [1966]

Στο Άρθρο 1[9] της Διακήρυξης επισημαίνονται όχι μόνο το δικαίωμα-και η υποχρέωση- του κάθε ανθρώπου να εξελίσσει τον πολιτισμό του, αλλά και η αξία των διαφορετικών πολιτισμών χωριστά αλλά και ως σύνολο, ως τμήματα της κοινής κληρονομιάς που ανήκει σε όλη την ανθρωπότητα.

-Σύμβαση σχετικά με τα ληπτέα μέτρα για την απαγόρευση και παρεμπόδιση της παράνομης εισαγωγής, εξαγωγής και μεταβίβασης της κυριότητας πολιτιστικών αγαθών.[10] [Παρίσι 1970].

Στο Άρθρο 1 της Σύμβασης ορίζεται ρητώς το περιεχόμενο της έννοιας «πολιτιστικό αγαθό»[11] και ακολουθεί ο προσδιορισμός του πεδίου ευθύνης των Συμβαλλομένων Μερών.

-Σύμβαση για την Προστασία της Παγκόσμιας Πολιτιστικής και Φυσικής Κληρονομιάς.[12] [Παρίσι 1972]

Στο Άρθρο 1 της Σύμβασης ορίζεται ρητώς το περιεχόμενο της έννοιας «πολιτιστική κληρονομιά»[13] και ακολουθεί ο προσδιορισμός του πεδίου ευθύνης των Συμβαλλομένων Μερών.

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2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

[8] Για το πλήρες κείμενο, βλ. http://portal.unesco.org/en/ev.php-URL_ID=13147&URL_DO=DO_TOPIC&URL_SECTION=201.html

[9] Article I
1. Each culture has a dignity and value which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

[10] Για το πλήρες κείμενο, βλ. http://www.law-archaeology.gr/Index.asp?C=117

[11] Article 1: "For the purposes of this Convention, the term 'cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory1 history, literature, art or science and which belongs to the following categories..."

[12] Για το πλήρες κείμενο, βλ. http://whc.unesco.org/en/conventiontext

-Οικουμενική Διακήρυξη της UNESCO για την Πολιτιστική Πολυμορφία.[14] [2001]

Χαρακτηριστική είναι η συγκεκριμενοποίηση των πολιτιστικών δικαιωμάτων στο Άρθρο 5 της Διακήρυξης, ως εξής: *"...όλοι οι άνθρωποι έχουν το δικαίωμα να εκφράζονται, καθώς και να δημιουργούν και να διαδίδουν το έργο τους στη γλώσσα της επιλογής τους, και ιδίως στη μητρική τους γλώσσα. Όλοι οι άνθρωποι δικαιούνται ποιοτική εκπαίδευση και κατάρτιση που σέβεται πλήρως την πολιτιστική τους ταυτότητα. Επιπλέον, όλοι οι άνθρωποι έχουν το δικαίωμα να συμμετέχουν στην πολιτιστική ζωή της επιλογής τους και να ασκούν τις δικές τους πολιτιστικές πρακτικές, υπό τον όρο του σεβασμού των ανθρωπίνων δικαιωμάτων και των θεμελιωδών ελευθεριών..."*

-Σύμβαση για την Προστασία της Άυλης Πολιτιστικής Κληρονομιάς.[15] [2003]

Στο Προοίμιο της Σύμβασης υπογραμμίζεται η αξία της Άυλης Πολιτιστικής Κληρονομιάς ως κινητήριος δύναμη της πολιτιστικής πολυμορφίας και εγγύηση της βιώσιμης ανάπτυξης, ενώ στο Άρθρο 2[16] παρ.1 προσδιορίζεται το πεδίο ορισμού και πρακτικής εφαρμογής της έννοιας «Άυλη Πολιτιστική Κληρονομιά».

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[13] Article 1

'For the purposes of this Convention, the following shall be considered as "cultural heritage":
**monuments:** architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
**groups of buildings:** groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
**sites:** works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view."

[14] Για το πλήρες κείμενο, βλ.
http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/CLT/pdf/declaration_cultural_diversity_el.pdf.pdf

[15] Για το πλήρες κείμενο, βλ. http://portal.unesco.org/en/ev.php
URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html

[16] *"...The "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity."*

-Διακήρυξη της UNESCO σχετικά με την εκούσια καταστροφή Πολιτιστικής Κληρονομιάς[17] [2003]

Στο Προοίμιο της Διακήρυξης επισημαίνεται η αξία της Πολιτιστικής Κληρονομιάς για τη διαμόρφωση *πολιτιστικής ταυτότητας* των ατόμων και των κοινοτήτων και, ως εκ τούτου, τίθεται το ζήτημα των συνεπειών επί των ανθρωπίνων δικαιωμάτων και της ανθρώπινης αξιοπρέπειας, σε περίπτωση εκούσιας καταστροφής της Πολιτιστικής Κληρονομιάς. Η αξία της Πολιτιστικής Κληρονομιάς υπογραμμίζεται και στο Άρθρο Ι[18] της Διακήρυξης, όπου διατυπώνεται ρητά η δέσμευση της διεθνούς κοινότητος για την προστασία της.

Σε επίπεδο Ευρωπαϊκής Ένωσης, τα κυριότερα κείμενα στα οποία απαντώνται τέτοιες αναφορές, είναι τα εξής[19]:

**ΣΥΜΒΟΥΛΙΟ ΤΗΣ ΕΥΡΩΠΗΣ**

-Ευρωπαϊκή Σύμβαση για τα Δικαιώματα του Ανθρώπου.[20] [1950]

-Διεθνές Σύμφωνο για τα Οικονομικά, Κοινωνικά και Πολιτιστικά Δικαιώματα[21]. [1966]

-Ευρωπαϊκή Σύμβαση για την Προστασία της Αρχιτεκτονικής Κληρονομιάς της Ευρώπης.[22] [Γρανάδα, 1985]

-Ευρωπαϊκή Σύμβαση για την Προστασία της Αρχαιολογικής κληρονομιάς.[23] [αναθ. Βαλέττα, 1992]

-Σύσταση 1197 της Κοινοβ/κής Συνέλευσης του Συμβουλίου της Ευρώπης.[24] [1992]

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[17] Για το πλήρες κείμενο, βλ. http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html

[18] Article I – Recognition of the importance of cultural heritage
*The international community recognizes the importance of the protection of cultural heritage and reaffirms its commitment to fight against its intentional destruction in any form so that such cultural heritage may be transmitted to the succeeding generations.*

[19] Η αναφορά στα κείμενα αυτά είναι επιγραμματική, καθώς τα περισσότερα εξ' αυτών χρησιμοποιούνται στην ανάλυση που ακολουθεί στις επόμενες ενότητες του παρόντος.

[20] Για το πλήρες κείμενο, βλ. http://www.hri.org/docs/ECHR50.html

[21] Για το πλήρες κείμενο, βλ. http://www2.ohchr.org/english/law/cescr.htm

[22] Για το πλήρες κείμενο, βλ. http://conventions.coe.int/Treaty/en/Treaties/html/121.htm

[23] Για το πλήρες κείμενο, βλ. http://conventions.coe.int/Treaty/en/Treaties/html/143.htm

-Ευρωπαϊκή Σύμβαση για την Προστασία του Τοπίου.[25] [Φλωρεντία, 2000]

-Ευρωπαϊκή Σύμβαση-πλαίσιο για την αξία της Πολιτιστικής Κληρονομιάς για την Κοινωνία.[26] [Φάρο, 2005]

Εκ των ανωτέρω επισήμων κειμένων, το πιο πρόσφατο, η Ευρωπαϊκή Σύμβαση-πλαίσιο για την αξία της Πολιτιστικής Κληρονομιάς για την Κοινωνία, θα έλεγε κανείς ότι αποτυπώνει με τον πιο ολοκληρωμένο-μέχρι στιγμής- τρόπο, όχι μόνο την αξία των πολιτιστικών δικαιωμάτων ως αναπόσπαστο τμήμα των ανθρωπίνων δικαιωμάτων που χρήζουν αντίστοιχης προστασίας, αλλά και την αξία της *πολιτιστικής κληρονομιάς* εν γένει: οριζόμενης συγκεκριμένως στα Άρθρα 2[27] και 3[28], όχι μόνο σε επίπεδο ατόμου-κοινότητος, αλλά πλέον και σε επίπεδο *ευρωπαϊκό*, ως κοινός πολιτιστικός παρονομαστής μνήμης, κατανόησης, ταυτότητος, συνοχής, δημιουργικότητας, ιδανικών, αρχών και αξιών διαμορφωμένων κατά το παρελθόν και εξελισσόμενων από κοινού, μέχρι τις μέρες μας. Εννοιολογικά, αυτός είναι και ο πιο σαφής συνδετικός κρίκος Ανθρωπίνων Δικαιωμάτων-Πολιτιστικών Δικαιωμάτων-Πολιτιστικής Κληρονομιάς.

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[24] Για το πλήρες κείμενο, βλ. http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta92/EREC1197.htm

[25] Για το πλήρες κείμενο, βλ. http://www.coe.int/t/dg4/cultureheritage/heritage/Landscape/default_en.asp

[26] Για το πλήρες κείμενο, βλ. http://conventions.coe.int/Treaty/en/Treaties/Html/199.htm

[27] *"cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time."*

[28] Article 3 –The common heritage of Europe
The Parties agree to promote an understanding of the common heritage of Europe, which consists of: a. all forms of cultural heritage in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity, and b the ideals, principles and values, derived from the experience gained through progress and past conflicts, which foster the development of a peaceful and stable society, founded on respect for human rights, democracy and the rule of law.

## Κεφάλαιο 2ον

## Η καταστροφή της Πολιτιστικής Κληρονομιάς ως παραβίαση Ανθρωπίνων Δικαιωμάτων.

Από το λεκτικό των προαναφερθέντων κειμένων, παρατηρούμε, ότι στην εξελικτική πορεία θεσμικής αναγνώρισης και κατοχύρωσης των Πολιτιστικών Δικαιωμάτων και της Πολιτιστικής Κληρονομιάς στο ευρωπαϊκό και διεθνές ανθρωπιστικό δίκαιο, διαγράφεται μια πολυδιάστατη αλλά και δυναμική σχέση Ανθρωπίνων Δικαιωμάτων-Πολιτισμού-Πολιτιστικών Αγαθών-Πολιτιστικής Κληρονομιάς (ενδεικτικά, Silverman & Ruggles, 2007), η οποία, με το πέρασμα του χρόνου, τείνει να συγκεκριμενοποιήσει όχι μόνο το πεδίο προστασίας αυτών, αλλά και τις υποχρεώσεις των Συμβαλλομένων Μερών κατά τρόπο σφαιρικό και συστημικό, έτσι ώστε να μην δημιουργούνται/υφίστανται περιθώρια πλημμελούς αντιμετώπισης των παραβιάσεων.

Ωστόσο, παρά τις φιλότιμες αυτές προσπάθειες προς επίτευξη ενός κατά το δυνατό συνεκτικού και ισχυρού πλαισίου διεθνούς προστασίας του ανωτέρω πλέγματος εννοιών, αξίζει να αναφερθεί το ότι η ερμηνεία των εννοιών αυτών και κατ' επέκταση του εύρους της προστασίας που χρήζουν και δικαιούνται θεσμικά, είναι πολλές φορές δυσχερής και ως εκ τούτου, στην πράξη, η θεσμική τους αντιμετώπιση παρουσιάζει πολλές αδυναμίες (Ayton-Shenker, 1995, Logan, 2008&2009, Meskell, 2010, Patel, 2012), οι οποίες συχνά μεταφράζονται στην πράξη με εξίσου αδύναμες διατυπώσεις επί των υποχρεώσεων των Συμβαλλομένων Μερών, οι οποίες όμως δεν επαρκούν για την επιβολή κυρώσεων στους παραβάτες (Patel, 2012). Κι αυτό γιατί όπως επισημαίνει πολύ χαρακτηριστικά ο Ian Hodder, ο προσδιορισμός αυτών των δικαιωμάτων εξαρτάται σε μεγάλο βαθμό από τα κοινωνικά συμφραζόμενα εντός των οποίων τα δικαιώματα αυτά ορίζονται, αναγνωρίζονται τυπικά, ασκούνται και εξελίσσονται[29] (Hodder, 2010).

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[29] *"Heritage ownership is often collective, and it is often more spiritual than pecuniary, more about identity and less about control. Although we are used to saying that heritage is partly a construction of the present, it is not " invented" by anyone and so differs from " intellectual property" (see, however, McGuire 2004). There are numerous ways in which people interact with heritage. They may want access, they may want to use it for education or have a voice in what is written and projected about it, they may want to use it in healing, reconciliation and restitution, make money out of it, put it in a museum, repatriate it, loan it, hide it, destroy it. It is difficult to use "ownership" as a term to encompass allthese nuances of meaning."*Hodder, 2010

Παρ' όλα αυτά και παρά το γεγονός ότι μέχρι στιγμής δεν υφίσταται κάποιος ξεκάθαρος ορισμός των Πολιτιστικών Δικαιωμάτων (Shaheed, 2010), ο οικουμενικός τους χαρακτήρας είναι αδιαμφισβήτητος. Από την εποχή της υιοθέτησης της Οικουμενικής Διακήρυξης των Δικαιωμάτων του Ανθρώπου μέχρι και σήμερα, ο οικουμενικός χαρακτήρας των Ανθρωπίνων Δικαιωμάτων και άρα όλων των υποκατηγοριών τους, υπογραμμίζεται κατ' επανάληψη. Ενδεικτική επί του συγκεκριμένου είναι η διατύπωση του Άρθρου 5 της Διακήρυξη της Βιέννης[30] (1993), σύμφωνα με το οποίο, παρά τη σημασία των επιμέρους πολιτιστικών, ιστορικών και θρησκευτικών ιδιαιτεροτήτων κάθε κράτους, η υποχρέωση προστασίας και προώθησης όλων των ανθρωπίνων δικαιωμάτων και θεμελιωδών ελευθεριών παραμένει[31].

Αυτό πρακτικά σημαίνει ότι τα συγκυριακού προσανατολισμού επιχειρήματα που ενδεχομένως να επικαλούνται χώρες οι οποίες δεν έχουν αναλάβει πλήρως τις ευθύνες και τις υποχρεώσεις τους στον τομέα αυτό, όπως η Τουρκία στην περίπτωση της Κύπρου, δεν ευσταθούν (βλ. σχετική ανάλυση στην *Έκθεση του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων σχετικά με τα Πολιτιστικά Δικαιώματα στην νομολογία του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων*[32]., 2011)

Κατ' επέκταση, εξελίσσοντας αυτή την συλλογιστική, η προστασία της Πολιτιστικής Κληρονομιάς, ως απορρέουσα της προστασίας των πολιτιστικών δικαιωμάτων των ατόμων και των κοινωνιών, στο διεθνές ανθρωπιστικό δίκαιο έχει επίσης οικουμενικό χαρακτήρα, με όλες τις συνέπειες που απορρέουν από αυτή την κατοχύρωση (Chamberlain, 2004, Brenner, 2006). Και το αντίστροφο: Η καταστροφή της Πολιτιστικής Κληρονομιάς, αποτελεί οικουμενικού χαρακτήρα παραβίαση των Πολιτιστικών Δικαιωμάτων των ατόμων και των κοινωνιών, και άρα θα έπρεπε να αντιμετωπίζεται, ως *έγκλημα κατά της ανθρωπότητος*, όπως

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[30] Για το πλήρες κείμενο βλ. http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en

[31] *«All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.»*

[32] Για το πλήρες κείμενο, βλ. http://www.echr.coe.int/NR/rdonlyres/F8123ACC-5A5A-4802-86BE8CDA93FE58DF/0/RAPPORT_RECHERCHE_Droits_culturels_EN.pdf.

άλλωστε ορίσθηκε από πολύ νωρίς, στο Προοίμιο της Προοίμιο Σύμβασης της Χάγης για την Προστασία των Πολιτιστικών Αγαθών σε Περίπτωση Ενόπλου Συρράξεως, το 1954.

Η διαπίστωση αυτή, ειδικά για την περίπτωση της Κύπρου που εξετάζουμε στην παρούσα μελέτη, έχει ηυξημένη βαρύτητα, για δύο λόγους: πρώτον, τοποθετεί το ζήτημα της προστασίας της πολιτιστικής κληρονομιάς της Νήσου σε διεθνές βάθρο, ως ζήτημα επαπειλούμενου τμήματος της *παγκόσμιας πολιτιστικής κληρονομιάς*, το οποίο αιτιολογεί πλήρως τις επαναλαμβανόμενες διεθνείς εκκλήσεις της Κυπριακής Δημοκρατίας για βοήθεια και άσκηση πιέσεων προς την Τουρκία. Ταυτόχρονα όμως, και ως απόρροια του πρώτου σημείου, δίνει την δυνατότητα στην Κύπρο να χειριστεί το ζήτημα με όρους διεθνείς, όχι στο πλαίσιο της επίλυσης των διμερών διαφορών της με την Τουρκία, αλλά στο πλαίσιο της θεσμικώς κατοχυρωμένης -βάσει Διεθνούς Δικαίου- θέσης της ως ανεξάρτητο κράτος και πλήρες μέλος της Ε.Ε. από 1ης Μαΐου 2004.

Σε αυτό ακριβώς το πλαίσιο έχουν επιτευχθεί[33] τα Πορίσματα της Επιτροπής Ανθρωπίνων Δικαιωμάτων των Ηνωμένων Εθνών, του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων, και τα Ψηφίσματα του Συμβουλίου της Ευρώπης και της Γενικής Συνέλευσης των Ηνωμένων Εθνών[34], όσον αφορά στην ευθύνη της Τουρκίας για τις καταστροφές στην Κύπρο και τις αντίστοιχες υποχρεώσεις της, σε αυτό το πλαίσιο κατετέθη το 2010 το περίφημο *Ψήφισμα του Αμερικανικού Κογκρέσου H.R.1631 για την προστασία των θρησκευτικών τόπων λατρείας των αντικειμένων τέχνης στις κατεχόμενες περιοχές της βόρειας Κύπρου και στο σεβασμό των θρησκευτικών ελευθεριών*[35] και σε αυτό ακριβώς το πλαίσιο συνεχίζονται και θα πρέπει να συνεχίζονται ακάθεκτες οι προσπάθειες της Κυπριακής Κυβέρνησης να αναδείξει το μέγεθος της τραγωδίας, με όλα τα μέσα, και προς πάσα κατεύθυνση, έως ότου δοθούν λύσεις *απτές*, συμπεριλαμβανομένων των κυρώσεων προς την Τουρκία για μη συμμόρφωση και κατ' επανάληψη καταπάτηση του Διεθνούς Ανθρωπιστικού Δικαίου.

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[33] Αναλυτική αναφορά με βιβλιογραφικές επισημάνσεις γίνεται στις επόμενες ενότητες.

[34] βλ. ιδίως -Ψήφισμα Γενικής Συνέλευσης των Η.Ε 60/147: «Βασικές Αρχές και Οδηγίες επί του Δικαιώματος Θεραπείας και Αποκατάστασης των Θυμάτων από Μαζικές Παραβιάσεις Κανόνων του Διεθνούς Δικαίου Ανθρωπίνων Δικαιωμάτων και Σοβαρών Παραβιάσεων του Διεθνούς Ανθρωπιστικού Δικαίου». [2006] http://www2.ohchr.org/english/law/remedy.htm

[35] Το ψήφισμα HR 1631 κατετέθη το 2010 από τους συμπροέδρους της επιτροπής Ελληνικών Θεμάτων του Κογκρέσου, Κώστα Μπιλιράκη και Κάρολιν Μαλόνι. Για πλήρες κείμενο, βλ. http://www.opencongress.org/bill/111-hr1631/show

## ΜΕΡΟΣ Β΄
## Η πολιτιστική και ανθρωπιστική διάσταση της τουρκικής κατοχής στην Κύπρο.

## Κεφάλαιο 1ον
## Η καταστροφή της πολιτιστικής κληρονομιάς στην Κύπρο.

«Η φθορά των πολιτιστικών αγαθών που ανήκουν σε οποιοδήποτε άτομο ισοδυναμεί με φθορά της πολιτιστικής *κληρονομιάς* ολόκληρης της ανθρωπότητος, καθώς κάθε άτομο συμβάλλει στον παγκόσμιο πολιτισμό.» (Προοίμιο Σύμβασης Χάγης για την Προστασία των Πολιτιστικών Αγαθών σε Περίπτωση Ενόπλου Συρράξεως, 1954[36]). Με αυτή την αναφορά στο Προοίμιό της, η Διακήρυξη της UNESCO για την εκούσια Καταστροφή Πολιτιστικής Κληρονομιάς[37] (Παρίσι, 17 Οκτωβρίου 2003) θέτει για πρώτη φορά μετά τη Σύμβαση της Χάγης του 1954, την οποία υπέγραψε η Τουρκία το 1964, το ζήτημα της *εκούσιας* φθοράς -ανεξαρτήτως έκτασης[38]- πολιτιστικών αγαθών ως *έγκλημα κατά της ανθρωπότητος*, για το οποίο οι κυβερνήσεις όχι μόνο καθίστανται υπεύθυνες και υπόλογοι στη διεθνή κοινότητα (Άρθρα 5 & 6 της Διακήρυξης[39]), αλλά θα πρέπει να μεριμνήσουν θεσπίζοντας αντίστοιχες ποινικές διατάξεις (Άρθρο 7 της Διακήρυξης[40])

Η μερική άρση των περιορισμών στην διέλευση στις κατεχόμενες περιοχές της Κύπρου το 2003, έφερε στο φως μία αλήθεια της οποίας η ύπαρξη ήταν

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[36] Για το πλήρες κείμενο, βλ. http://www.icrc.org/ihl.nsf/FULL/400

[37] Για το πλήρες κείμενο, βλ. http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html

[38] Βλ. Άρθρο 2 παρ. 2 της Διακήρυξης, όπου διευκρινίζεται ο όρος «εκούσια φθορά» ως εξής: *«..."intentional destruction" means an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience, in the latter case in so far as such acts are not already governed by fundamental principles of international law.»*

[39] Άρθρο 5 της Διακήρυξης: "*...When involved in an armed conflict, be it of an international or non international character, including the case of occupation, States should take all appropriate measures to conduct their activities in such a manner as to protect cultural heritage...*"

Άρθρο 5 της Διακήρυξης:" *A State that intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization, bears the responsibility for such destruction, to the extent provided for by international law"*

[40] Όπως αναφέρεται χαρακτηριστικά στο Άρθρο 7 της Διακήρυξης, «*States should take all appropriate measures, in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against, those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization.*»

γνωστή από παλαιότερα[41], όχι όμως και η πλήρης έκτασή της: Στη διάρκεια των τεσσάρων σχεδόν δεκαετιών της παράνομης τουρκικής κατοχής στην Κύπρο, η συστηματική και συνεχιζόμενη καταστροφή της πολιτιστικής κληρονομιάς αγγίζει τα όρια της εξάλειψης[42] (ενδεικτικά: Fielding, 1976, Jansen, 1987, Χοτζάκογλου,2008, Papademetriou 2009[43], Ηλιάδης, 2010, Παπαγεωργίου, 2010).

Βάσει των διαπιστώσεων της ερευνητικής ομάδος που συγκροτήθηκε με πρωτοβουλία της Ιεράς Μονής Κύκκου, το 2008[44], με σκοπό την συστηματική και επιστημονική καταγραφή των κατεχομένων και κατεστραμμένων χριστιανικών μνημείων στη βόρεια Κύπρο, το Τουρκικό μένος για σύληση της ελληνορθόδοξης πολιτιστικής κληρονομιάς δεν έκανε διακρίσεις: άνω των πεντακοσίων εκκλησιών και μοναστηριών -συμπεριλαμβανομένων χώρων ταφής[45]- λεηλατήθηκαν[46], δεκάδες τοιχογραφίες και ψηφιδωτά[47] απεσπάσθησαν από τις θέσεις τους και δρομολογήθηκαν προς πώληση, ενώ περισσότερες από 20.000 εικόνες εκλάπησαν.

Στο σημείο αυτό επισημαίνεται η ιδιαιτέρως χαρακτηριστική η περίπτωση των ψηφιδωτών της Παναγίας της Κανακαριάς, τα οποία τεμαχίσθηκαν και

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[41] Πριν από το 2003, από μαρτυρίες αιχμαλωτισθέντων Ελληνοκυπρίων και ξένων, κυρίως, δημοσιογράφων. Πολύ χαρακτηριστική η παρατήρηση του βρετανού δημοσιογράφου Joseph Fielding σε άρθρο του στην εφημερίδα The Guardian, το Μάιο του 1976, δύο μόλις χρόνια μετά την Τουρκική εισβολή: *"ο βανδαλισμός και η βεβήλωση είναι τόσο μεθοδική που ισοδυναμούν με αφανισμό κάθε τι ιερού για τους Έλληνες"*

[42] Βλ. Χαρακτηριστικά:
-"Κύπρος: Η Λεηλασία ενός Πολιτισμού." Επιτροπή για την Προστασία της Πολιτιστικής Κληρονομιάς της Κύπρου", Βουλή των Ελλήνων. [1999]
-"Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law" Report for US Congress, Directorate of Legal Research for Foreign, Comparative, and International -Law. [2009]
-"Ενας Πολιτισμός χάνεται" Γραφείο Τύπου και Πληροφοριών, Κυπριακή Δημοκρατία. [2010]
-"Turkish Policy in Cyprus: Continued Violation of Human Rights and systematic destruction of our cultural heritage." Cultural Association of Assia.

[43] "Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law." Report for Congress, 2009

[44] Βλ. τη σχετική έκδοση, Χοτζάκογλου, Χ. (2008) *Τα Θρησκευτικά Μνημεία στην Κατεχόμενη Κύπρο. Όψεις και πράξεις μιας συνεχιζόμενης καταστροφής*. Πολιτιστικό Ίδρυμα Ιεράς Μονής Κύκκου.

[45] Διενήχθησαν τάφοι , σταυροί απομακρύνθηκαν και κομματιάστηκαν.

[46] Πολλά εξ' αυτών χρονολογούνται από την Βυζαντινή εποχή.

[47] Για πιο αναλυτικά, βλ. Παπαγεωργίου, Α.,(1999). *Η εκκλησία της Παναγίας Κανακαριάς στη Λυθράγκωμη*. Επιτροπή για την Προστασία της Πολιτιστικής Κληρονομιάς της Κύπρου. Βλ επίσης το Πόρισμα του Δικαστηρίου της Ινδιανάπολης για την υπόθεση *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc*

αφαιρέθηκαν κατά την τριετία 1976-1979. Το 1988 εντοπίστηκαν κάποια από αυτά στην Ινδιανάπολη των ΗΠΑ, κατόπιν προσφοράς που έγινε στο Paul Getty Museum από την έμπορο έργων τέχνης Peg Goldberg,η οποία είχε αγοράσει τέσσερα τεμάχια ψηφιδωτών από το ναό της Παναγίας Κανακαριάς του 6ου αιώνα από τον Aydin Dikmen, προς ένα εκατομμύριο δολάρια με τον σκοπό να τα μεταπωλήσει για είκοσι εκατομμύρια. Όταν έγινε προσφορά στο Μουσείο, η Επιμελήτρια των Συλλογών ενημέρωσε τις Κυπριακές Αρχές οι οποίες μαζί με την Εκκλησία της Κύπρου κατέφυγαν στην αμερικανική δικαιοσύνη για τον επαναπατρισμό των ψηφιδωτών.

Το Δικαστήριο της Ινδιανάπολης καταδίκασε την Goldberg και τα ψηφιδωτά επέστρεψαν στην Κύπρο 1991 και σήμερα εκτίθενται στο Βυζαντινό Μουσείο του Ιδρύματος Αρχιεπισκόπου Μακαρίου Γ' στη Λευκωσία.

Η Peg Goldberg κατείχε παράνομα τα εξής τμήματα:
1. Το άνω τμήμα του στήθους του Αρχαγγέλου Μιχαήλ.
2. Το άνω τμήμα της παράστασης της Θεοτόκου και του Χριστού.
3. Τα μετάλλια που εικονίζουν τους απόστολους Ματθαίο και Ιάκωβο.

Το Σεπτέμβριο του 1997 βρέθηκε και αποκτήθηκε το μετάλλιο με τη μορφή του αποστόλου Θαδδαίου και τον Οκτώβριο του ίδιου έτους βρέθηκε στην κατοχή του αρχαιοκάπηλου Aydin Dikmen από τη γερμανική αστυνομία το μετάλλιο με τη μορφή του αποστόλου Θωμά. Ένα μήνα μετά βρέθηκε και το δεξί χέρι του αρχαγγέλου Γαβριήλ και το αριστερό χέρι της Παναγίας.

Αντίστοιχα περιστατικά έχουν σημειωθεί σε βιβλιοθήκες μοναδικών συλλογών των οποίων οι θησαυροί κατεστράφησαν ολοσχερώς - όπως η βιβλιοθήκη του Μήτσου Μαραγκού στην Αμμόχωστο- ή εκλάπησαν προς παράνομη διακίνηση στο εξωτερικό, αλλά και σε σημαντικές ιδιωτικές συλλογές Ελληνοκυπρίων που αναγκάστηκαν να εγκαταλείψουν τις εστίες τους, -όπως η συλλογή Χατζηπροδρόμου η οποία αριθμούσε περί τα 2000 αντικείμενα τα οποία επίσης εκλάπησαν και πωλήθηκαν στο εξωτερικό.

Σύμφωνα δε με εκτιμήσεις τη Κυπριακής Αστυνομίας, έχουν εξαχθεί παράνομα προς ξένες αγορές πάνω από 60.000 αρχαία αντικείμενα[48], ενώ σημαντικότατος είναι και ο αριθμός των κυπριακών αρχαιοτήτων που

[48] Περισσότερες πληροφορίες στο Τμήμα Αρχαιοτήτων Κύπρου.

παρουσιάζονται σε διεθνείς Οίκους Δημοπρασιών[49], στους καταλόγους των οποίων δεν αναφέρεται η προέλευση των αντικειμένων[50].

Ωστόσο, παρ' όλο που η Τουρκία δεν συγκαταλέγεται[51] στα Συμβαλλόμενα Μέρη της Σύμβασης UNIDROIT για τα κλαπέντα ή παρανόμως εξαχθέντα πολιτιστικά αγαθά[52] [Ρώμη, 1995], -ενώ η Κύπρος έχει υπογράψει τη Σύμβαση από το 2004- μένει να διευκρινιστεί στην επικείμενη απολογιστική συνάντηση των Κρατών-Μερών (Παρίσι, 19 Ιουνίου 2012), κατά πόσο η πρακτική εφαρμογή των συγκεκριμένων διατάξεων θα μπορούσε να επεκταθεί και προς τρίτα μέρη, δεδομένου ότι το παράνομο εμπόριο αρχαιοτήτων έχει πλέον λάβει παγκόσμιες διαστάσεις και εξελίσσεται ιδιαιτέρως σε χώρες μη θετικά προσκείμενες προς το διεθνές νομικό πλαίσιο προστασίας πολιτιστικών αγαθών.

Σε κάθε περίπτωση πάντως, η Τουρκία έχει επικυρώσει από τις 21.04.1981 τη Σύμβαση της UNESCO σχετικά με τα ληπτέα μέτρα για την απαγόρευση και παρεμπόδιση της παράνομης εισαγωγής, εξαγωγής και μεταβίβασης της κυριότητας πολιτιστικών αγαθών[53] [Παρίσι 1970], την οποία αγνοεί και καταπατά κατ' εξακολούθηση[54].Το άρθρο 11 της Σύμβασης είναι σαφές: «η εξαγωγή και

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[49] Ως προς το θέμα της αρχαιοκαπηλίας, καταβάλλονται σημαντικές προσπάθειες από το Τμήμα Αρχαιοτήτων, Κοινωφελή Ιδρύματα και λοιπούς φορείς για τον επαναπατρισμό των αντικειμένων. Παράδειγμα η διάσωση το 2007 έξι εικόνων από τις ΗΠΑ με τις προσπάθειες της Ιεράς Μητροπόλεως Μόρφου.

[50] Βλ. χαρακτηριστικά μελέτη των Brodi, N. et al. (2000) με τίτλο "Stealing History. The illicit trade in Cultural Material" [The McDonald Institute for Archaeological Research Papers] στην οποία επιχειρείται μία επισκόπηση του ζητήματος της παράνομης εμπορίας πολιτιστικού υλικού. Ειδικά στις ενότητες 1.4 (*The economics of looting*) και 1.5. (*Criminal aspects of the illicit trade*) σκιαγραφούνται οι οικονομικές διαστάσεις του διεθνούς συστήματος παράνομης διακίνησης πολιτιστικών αγαθών.

[51] Για πλήρη κατάλογο των Συμβαλλομένων Μερών της Σύμβασης, βλ. http://www.unidroit.org/english/implement/i-95.pdf

[52] Για το πλήρες κείμενο, στην ελληνική, βλ. http://www.unidroit.org/english/conventions/1995culturalproperty/translations/culturalproperty-greek.pdf

[53] Για το πλήρες κείμενο βλ. http://www.law-archaeology.gr/Index.asp?C=117

[54] Ειδικότερα, καταπάτηση των Άρθρων 10, 12 & 13 της Σύμβασης, σύμφωνα με τα οποία υα Συμβαλλόμενα Μέρη αναλαμβάνουν τις εξής υποχρεώσεις:
Article 10
-To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;

μεταβίβαση κυριότητος πολιτιστικών αγαθών υπό συνθήκες αμέσως ή εμμέσως προερχόμενες από κατοχικό καθεστώς μίας χώρας υπό ξένη κυριαρχία, θα θεωρείται παράνομη.»

Προκειμένου για την ευκρινέστερη αποτύπωση της κατάστασης, τα κατεστραμμένα μνημεία θα μπορούσαν να κατηγοριοποιηθούν ως εξής (Χατζηχριστοδούλου, 2010):

- Μνημεία που έχουν μετατραπεί σε Μουσεία[55]: Πολύ λίγα σε αριθμό. Εκεί έχουν μεταφερθεί εικόνες και αντικείμενα από άλλα κατεστραμμένα μνημεία, τα οποία ταυτοποιήθηκαν από περιγραφές σε βιβλία, μαρτυρίες και παλιές φωτογραφίες.
- Μνημεία που έχουν μετατραπεί σε τζαμιά. Οι Ναοί αυτοί διατηρούνται σε σχετικά καλή κατάσταση, επειδή χρησιμοποιούνται.
- Μνημεία που παρέμειναν στα χέρια των εγκλωβισμένων[56]. Τα μνημεία αυτά δεν έχουν αναστηλωθεί ή έστω συντηρηθεί.
- Μνημεία που κατεστράφησαν ολοσχερώς και ισοπεδώθηκαν[57].

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-To endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

Article 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

Article 13

(a) to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;
(b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
(c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners ;
(d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

[55] Η Μονή του Αποστόλου Βαρνάβα κοντά στην Σαλαμίνα, η Μονή του Αγ. Μάμαντος στη Μόρφου, ο Ναός του Αρχαγγέλου στην Κερύνεια και ο Ναός της Παναγίας στο Τρίκωμο.

[56] Π.χ. η Μονή του Αποστόλου Ανδρέα και ο Άγ. Συνέσιος στο Ριζοκάρπασο.

[57] Π.χ. το καθολικό της Μονής της Παναγίας Αυγασίδας, του Προφήτου Ζαχαρίου στο Δίκωμο, της Αγίας Αικατερίνης στο Γεράνι και του Προφήτου Αβακούμ στην Καρπασία.

□ Μνημεία που συλήθηκαν εκ προθέσεως και εγκαταλείφθηκαν[58].

□ Μνημεία που μετετράπησαν.σε αποθήκες, σταύλους, αφοδευτήρια, καφενεία και αίθουσες χορού.[59]

Στα ανωτέρω θα πρέπει να προστεθούν και οι παράνομες ανασκαφές που πραγματοποιούνται στα κατεχόμενα[60], καταπατώντας τη Σύμβαση της Χάγης του 1954 για την Προστασία της Πολιτιστικής Κληρονομιάς σε περίπτωση Ένοπλης Σύρραξης -την οποία υπέγραψε η Τουρκία το 1964- αλλά, ταυτόχρονα, αγνοώντας και τη Σύσταση της UNESCO του 1956[61] η οποία ορίζει τις Διεθνείς Αρχές για τη Διεξαγωγή Αρχαιολογικών ανασκαφών. Χαρακτηριστικό παράδειγμα αυτής της παράνομης πρακτικής είναι οι συνεχιζόμενες ανασκαφές στον κατεχόμενο αρχαιολογικό χώρο της Σαλαμίνας, από το Πανεπιστήμιο της Άγκυρας σε συνεργασία με το «Πανεπιστήμιο Ανατολικής Μεσογείου» που έχει την έδρα του στην Αμμόχωστο. Προ της εισβολής, στον συγκεκριμένο αρχαιολογικό χώρο πραγματοποιούσε νόμιμες ανασκαφές η Γαλλική αποστολή του Πανεπιστημίου της Λυών, οι οποίες όμως ανεστάλησαν.

Το θλιβερό είναι ότι όλη αυτή η συστηματική προσπάθεια κονιορτοποίησης της ιστορικής μνήμης στην Κύπρο, ιδίως κατά τα πρώτα χρόνια της τουρκικής κατοχής, ελάμβανε χώρα όχι μόνο επί τη βάσει της εγκληματικής δράσης αρχαιοκαπήλων, τυμβωρύχων και λοιπών κακοποιών στοιχείων, αλλά και με την ανοχή και τη συνεργασία των κατοχικών δυνάμεων (Καραγιώργης, 1997, Hardy, 2008). Η ερμηνεία αυτή βασίζεται στο γεγονός ότι σε πολλές περιπτώσεις σύλησης

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[58] Π.χ. η Μονή του Αγίου Γεωργίου του Ρηγάτη, που αυτή τη στιγμή βρίσκεται εντός πεδίου βολής των κατοχικών δυνάμεων.

[59] Π.χ. ο Ναός της Αγίας Αναστασίας στην Λάπηθο και δύο ναοί του Αγίου Αναστασίου στην Περιστερωνοπηγή Αμμοχώστου.

[60] «...Οι ανασκαφές ξεκίνησαν το 1998 και συνεχίζονται μέχρι σήμερα, με επικεφαλής τον υπεύθυνο του Τμήματος Κλασικής Αρχαιολογίας του Πανεπιστημίου της Άγκυρας, καθηγητή Οζκιούρ Οζκιουνέρ. Πέρυσι η αρχαιολογική σκαπάνη έφερε στο φως τρία μεγάλα ρωμαϊκά αγάλματα ύψους δύο μέτρων και είκοσι εκατοστών που χρονολογούνται στον 2ο π.Χ. αιώνα και δύο ακόμα. Μέλος της αρχαιολογικής ομάδας που ολοκλήρωσε τη φετινή έρευνα στις 25 Ιουλίου, η Αϊτσά Οζκάν ανέφερε ότι η ανεύρεση των αγαλμάτων (συνολικά τέσσερα αγάλματα μέσα σε δέκα μέρες) έχει αυξήσει τις ελπίδες για την προοπτική πλούσιων ιστορικών ευρημάτων στα ρωμαϊκά λουτρά και ότι πρόθεσή τους είναι του χρόνου να αναπαλαιώσουν τα ρωμαϊκά λουτρά ώστε να γίνουν μέρος της παγκόσμιας πολιτιστικής κληρονομιάς....» [Από άρθρο στο ιστολόγιο ΕΛΛΑΣ http://ellas2.wordpress.com/2011]

[61] Για το πλήρες κείμενο, βλ. http://www.icomos.org/unesco/delhi56.html

και κλοπής τοιχογραφιών και ψηφιδωτών, όπως τα ψηφιδωτά του Ναού της Παναγίας της Κανακαριάς, οι εργασίες απαιτούσαν εξειδικευμένο τεχνικό προσωπικό ώστε να μην καταστραφούν τα ευρήματα και ήσαν ιδιαιτέρως χρονοβόρες. Ως εκ τούτου, θεωρείται απίθανο να μην έγιναν αντιληπτές από τις στρατιωτικές δυνάμεις κατοχής στις αντίστοιχες περιοχές.

Σημειώνεται ότι ο *Νόμος περί Αρχαιοτήτων* της Κυπριακής Δημοκρατίας απαγορεύει ρητά κάθε ανασκαφή χωρίς προηγούμενη άδεια του Διευθυντή του Τμήματος Αρχαιοτήτων, ενώ με την τροποποίηση του Νόμου[62] το 1996, η εξαγωγή αρχαιοτήτων έχει απαγορευθεί. Ωστόσο, όπως ανεφέρθη ανωτέρω, κατά παράβαση της Σύμβασης της UNESCO του 1970 σχετικά με τα ληπτέα μέτρα για την απαγόρευση και παρεμπόδιση της παράνομης εισαγωγής, εξαγωγής και μεταβίβαση της κυριότητας πολιτιστικών αγαθών, την οποία επίσης έχει υπογράψει η Τουρκία, η παράνομη εξαγωγή αρχαιοτήτων συνεχίζεται, και μάλιστα, υπό την ανοχή της διεθνούς κοινότητος (Kline, 1999)

Εξετάζοντας λοιπόν κανείς τον κατάλογο των Διεθνών Κειμένων σχετικά με την Προστασία της Πολιτιστικής Κληρονομιάς τα οποία έχει υπογράψει η Τουρκία- και από τα οποία απορρέουν αντίστοιχες υποχρεώσεις και δεσμεύσεις- δημιουργούνται εύλογα ερωτηματικά ως προς την ανενόχλητη συνέχιση της κατάφορης παραβίασης αυτών των κειμένων, τη στιγμή μάλιστα που η ευρωπαϊκή της προοπτική τελεί υπό αιρεσιμότητα[63]. Πώς μία χώρα η οποία, υπογράφοντας, δηλώνει ότι συμφωνεί με τα προβλεπόμενα[64]:

- Της Σύμβασης για την Προστασία των Πολιτιστικών Αγαθών σε περίπτωση ένοπλης σύρραξης και του Πρώτου Πρωτοκόλλου αυτής [Χάγη, 1954][65].

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[62] Για το πλήρες κείμενο του Νόμου βλ.
http://www.mcw.gov.cy/mcw/da/da.nsf/DMLlaw_gr/DMLlaw_gr?OpenDocument

[63] Βλ. Εκθέσεις Προόδου της Ευρωπαϊκής Επιτροπής για την Τουρκία για το 2010 http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf και το 2011 http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf

[64] Βλ.σχόλια του Συνδέσμου Κυπρίων Αρχαιολόγων επί της Έκθεσης της Τουρκίας για την «εφαρμογή του Διεθνούς Συμφώνου για τα Οικονομικά, Κοινωνικά και Πολιτιστικά Δικαιώματα.

[65] http://portal.unesco.org/culture/en/ev.php
URL_ID=35156&URL_DO=DO_TOPIC&URL_SECTION=201.html
Ειδικότερα, στο Άρθρο 3, παρ. 4 αναφέρεται ότι "*Τα Υψηλά Συμβαλλόμενα Μέρη αναλαμβάνουν την υποχρέωση να σέβονται την πολιτιστική ιδιοκτησία που βρίσκεται στο έδαφός τους, καθώς και εντός της επικράτειας των άλλων Υψηλών Συμβαλλομένων Μερών, απέχοντας από κάθε χρήση της ιδιοκτησίας αυτής και του αμέσου περιβάλλοντός της.*"

- Της Ευρωπαϊκής Σύμβασης για τον Πολιτισμό[66] [Παρίσι, 1954]
- Της Σύμβασης σχετικά με τα ληπτέα μέτρα για την απαγόρευση και παρεμπόδιση της παράνομης εισαγωγής, εξαγωγής και μεταβίβαση της κυριότητας πολιτιστικών αγαθών [Παρίσι 1970].
- Της Σύμβασης για την Προστασία της Παγκόσμιας Πολιτιστικής και Φυσικής Κληρονομιάς[67] [Παρίσι 1972]
- Της Σύμβασης για την Προστασία της Αρχιτεκτονικής Κληρονομιάς της Ευρώπης[68] [Γρανάδα, 1985]
- Της Ευρωπαϊκής Σύμβασης για την Προστασία της Αρχαιολογικής κληρονομιάς[69] [Βαλέττα, 1992]
- Της Ευρωπαϊκής Σύμβασης για την Προστασία του Τοπίου[70] [Φλωρεντία, 2000]
- Της Σύμβασης για την Προστασία της Άυλης Πολιτιστικής Κληρονομιάς[71] [Παρίσι, 2003]

και η οποία από το 2003 έχει υπογράψει το Διεθνές Σύμφωνο για τα Οικονομικά, Κοινωνικά και Πολιτιστικά Δικαιώματα[72], ενώ συμμετείχε και στην 32η Σύνοδο των Ηνωμένων Εθνών (Παρίσι, 17 Οκτωβρίου 2003), προϊόν της οποίας ήταν η Διακήρυξη της UNESCO σχετικά με την εκούσια Καταστροφή Πολιτιστικής Κληρονομιάς[73] εξακολουθεί, αφενός μεν να καταπατά τις δεσμεύσεις της[74],

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[66] http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=018&CL=ENG

[67] http://whc.unesco.org/en/conventiontext

[68] http://conventions.coe.int/Treaty/en/Treaties/html/121.htm

[69] Για το πλήρες κείμενο βλ. http://conventions.coe.int/Treaty/en/Treaties/html/143.htm

[70] Για το πλήρες κείμενο βλ. http://www.coe.int/t/dg4/cultureheritage/heritage/Landscape/default_en.asp

[71] http://portal.unesco.org/en/ev.php-URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html

[72] Για το πλήρες κείμενο βλ. http://www2.ohchr.org/english/law/cescr.htm

[73] Για το πλήρες κείμενο βλ. http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html

[74] Το 2011 υπήρξαν δύο καταγγελίες που αφορούσαν στη μερική καταστροφή των τοιχογραφιών του Αγ. Νικολάου στη σπηλιά της Εκκλησίας της Παναγιάς Γελατερουσας στην πόλη Καραβάς, η οποία τοιχογραφία διατηρούνταν τουλάχιστον μέχρι το 2006, καθώς και στην μερική κατάρρευση των ιστορικών τειχών της Αμμοχώστου.

αφετέρου να δρα ανενόχλητη εφαρμόζοντας την καταστροφική της στρατηγική δίχως κυρώσεις, παρ' όλο που αυτές απορρέουν από την ευθύνη ενός κράτους[75].

Επισημαίνεται δε ότι η ύπαρξη *ευθύνης* τόσο της Τουρκίας, όσο και του ψευδοκράτους, -παρ' όλο που αυτό δεν αναγνωρίζεται διεθνώς[76]- για τις καταστροφές έχει καταστεί σαφής σε πληθώρα περιπτώσεων της διεθνούς[77] και ευρωπαϊκής νομολογίας[78], ενώ σαφής είναι και η υπ. αριθμ. 12 διευκρίνιση[79] που συμπεριλαμβάνεται στις Κατευθυντήριες Γραμμές της ΕΕ για την προώθηση της συμμόρφωσης προς το Διεθνές Ανθρωπιστικό Δίκαιο[80] (2005), ως προς την ευθύνη εφαρμογής του Δικαίου Ανθρωπίνων Δικαιωμάτων από τις χώρες, τόσο εν καιρώ ειρήνης, όσο και εν καιρώ ένοπλης σύρραξης. Σε κάθε περίπτωση πάντως, ενδεικτικό της στάσης της Τουρκίας είναι ίσως και το γεγονός ότι μέχρι σήμερα δεν

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[75] Βλ. π.χ. Άρθρο 9 της Σύμβασης των Η.Ε. σχετικά με τα ληπτέα μέτρα για την απαγόρευση και παρεμπόδιση της παράνομης εισαγωγής, εξαγωγής και μεταβίβασης της κυριότητας πολιτιστικών αγαθών.: "Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances. to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State."

[76] Βλ σχετικά πολύ ενδιαφέρουσα ανάλυση στο Talmon, S. (2006) "*Collective Non-recognition of Illegal States. Legal Foundations and Consequences of an Internationally Co-ordinated Sanction with Particular Reference to the Turkish Republic of Northern Cyprus.*" στην οποία *υπογραμμίζεται το επιχείρημα ότι η μαζική μη αναγνώριση του ψευδοκράτους οφείλεται ακριβώς στο γεγονός ότι η ίδρυση και η ύπαρξή του στηρίζεται στην καταπάτηση των κανόνων του Διεθνούς Δικαίου.*

[77] π.χ. Βλ. Πόρισμα του Δικαστηρίου της Ινδιανάπολης για την υπόθεση *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc* .που αφορούσε στην κλοπή και παράνομη πώληση των ψηφιδωτών της Εκκλησίας της Παναγίας της Κανακαριάς.(Σημ. 14 ανωτέρω)

[78] π.χ. βλ. Πορίσματα Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων για τις υποθέσεις Λοιζίδου vs Τουρκίας (1998), Κύπρος εναντίον Τουρκίας (2001), Ξενίδη-Αρέστη vs Τουρκίας (2005), Βαρνάβα vs Τουρκίας (2008).

[79] Όπως αναφέρει χαρακτηριστικά, «...Ε δικότερα το ΔΑΔ τυγχάνει εφαρμογής σε καιρούς ένοπλων συγκρούσεων και κατοχής μετά από ένοπλη σύγκρουση. Αντιστρόφως, το δίκαιο των ανθρωπίνων δικαιωμάτων ισχύει για όλα τα άτομα που υπάγονται στη δικαιοδοσία του οικείου κράτους εν καιρώ ειρήνης καθώς και εν καιρώ ένοπλης σύγκρουσης. Αυτό έχει ως αποτέλεσμα ότι, καίτοι διακριτά, τα δύο σύνολα κανόνων ενδέχεται να ισχύουν αμφότερα σε συγκεκριμένη περίπτωση και άρα πρέπει ενίοτε να εξετάζεται η μεταξύ των σχέση.»

[80] Για το πλήρες κείμενο βλ. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005XG1223%2802%29:EL:HTML

έχει υπογράψει[81] τη Σύμβαση-Πλαίσιο για την αξία της Πολιτιστικής Κληρονομιάς για την Κοινωνία (Φάρο, 2005)[82].

Σίγουρα η παρουσίαση των καταστροφών επί του παρόντος δεν δύναται να είναι εξαντλητική[83]. Εκείνο όμως που έχει σημασία να κατανοήσουμε, είναι το *γιατί*: γιατί αυτή η εγκληματική πρακτική συνεχίζεται ακόμη, σε ποιο πλαίσιο εντάσσεται και με ποιους σκοπούς.

Δεδομένου ότι η μεθοδική σύληση της πολιτιστικής κληρονομιάς στην Κύπρο από τους Τούρκους κατακτητές συνοδεύεται και από άλλες ειδεχθείς πρακτικές παραβίασης ανθρωπίνων δικαιωμάτων (ενδεικτικά βλ. την Έκθεση της Επιτροπής των Δικαιωμάτων του Ανθρώπου του Οικονομικού και Κοινωνικού Συμβουλίου του ΟΗΕ, σχετικά με τις παραβιάσεις επί των ανθρωπίνων δικαιωμάτων στην Κύπρο[84]) οι οποίες θα αναπτυχθούν στην επόμενη ενότητα, θα μπορούσε να θεωρηθεί ότι όλα αποτελούν μέρος της ίδιας στρατηγικής τριών επιπέδων[85]: καταστροφή μνήμης (Bevan, 2005, Taylor, 2008), εθνική κάθαρση, απώλεια ταυτότητας (ενδεικτικά Ήφαιστος 2009, 2010, Stanley-Price, 2005, Jansen, 2005)[86]. Μιας στρατηγικής η οποία απαντάται συχνότατα στη διεθνή πολεμική

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[81] Βλ. κατάλογο Διεθνών Κειμένων τα οποία έχει υπογράψει η Τουρκία http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=TR

[82] Για το πλήρες κείμενο βλ. http://conventions.coe.int/Treaty/en/Treaties/Html/199.htm

[83] Το πόρισμα της Έκθεσης της Επιτροπής Ελσίνκι του Αμερικανικού Κογκρέσου (2009) για την καταστροφή της Πολιτιστικής Κληρονομιάς στο βόρειο τμήμα της Κύπρου και τις καταπατήσεις του Διεθνούς Δικαίου, συνοψίζουν το μέγεθος της τραγωδίας: "*Turkey, during thirty-five years of occupying the northern part of Cyprus, has engaged in acts of destruction, desecration, and pillage of religious and archaeological sites, which constitute the religious and cultural heritage of the peoples of Cyprus, and the preservation of which is essential for the interest of humankind in general. The Government and the Church of Cyprus, as the claimants of ownership of cultural property located in the northern part of Cyprus, have been actively pursuing the repatriation of stolen religious objects and cultural artifacts. Under conventional and customary international law, Turkey, as an occupying power, bears responsibility for acts against cultural property. Responsibility also arises based on legal instruments addressing the illicit export and transfer of ownership of stolen cultural objects from the occupied northern part of Cyprus.*" [Παράρτημα Ι]

[84] Βλ. Παράρτημα ΙΙ

[85] Βλ. πολύ ενδιαφέρουσες παρατηρήσεις του καθηγητή Στρατηγικών Σπουδών του Παν/μίου Πειραιώς Π. Ηφαίστου, επί των ηγεμονικών τάσεων της Τουρκίας, με αφορμή το σχολιασμό του Βιβλίου του Τούρκου ΥΠΕΞ Αχμέτ Νταβούτογλου με τίτλο: «Στρατηγικό Βάθος. Η διεθνής θέση της Τουρκίας». http://www.sigmalive.com/simerini/politics/interviews/277498

[86] Βλ. χαρακτηριστικά τις παρεμβάσεις του Μονίμου Αντιπροσώπου της Κύπρου στα Ηνωμένα Έθνη, Πρέσβυ κ. Χατζημιχαήλ, στην Τρίτη Επιτροπή της Γενικής Συνέλευσης του ΟΗΕ, (Επιτροπή για Κοινωνικά, Ανθρωπιστικά και Πολιτιστικά θέματα), 2009 και 2010. http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/E460F14CAE005FACC2257662003B6586?OpenDocument

ιστορία[87] (Ascherson, 2005, Bevan 2006) και ανάσχεση της οποίας ήταν ο στόχος της Διακήρυξης της UNESCO (2003) σχετικά με την Εκούσια Καταστροφή Πολιτιστικής Κληρονομιάς[88].

Ολοκληρώνοντας την παρούσα ενότητα, θα πρέπει να σημειωθεί ότι μία αναφορά στις καταστροφές στην Κύπρο κρίνεται χρήσιμο να περιλαμβάνει, εκτός από τις περιπτώσεις σύλησης της Πολιτιστικής Κληρονομιάς, και τις περιπτώσεις βίαιης επέμβασης στο κατεχόμενο αστικό τοπίο, οι οποίες εμπεριέχουν και διαστάσεις παραβίασης ανθρωπίνων δικαιωμάτων.

Ήδη από τα μέσα του 20ου αι., η έννοια του τοπίου στην διεθνή βιβλιογραφία άρχισε να συσχετίζεται με την πολιτισμική διάδραση και, κατ' επέκταση, με την διαμόρφωση *ταυτότητας* (βλ. ενδεικτικά Mitchell, 1994[89]), μέσω των διαδικασιών διαμόρφωσης *μνήμης* -ατομικής και συλλογικής- και αισθήματος ανήκειν, ως απόρροια αυτής της *μνήμης* (Cuba, L. & D. M Hummon, 1993). Στο ίδιο πλαίσιο, μία προσεκτική ανάγνωση του ορισμού του «τοπίου» που περιλαμβάνεται στην σχετικά πρόσφατη Ευρωπαϊκή Σύμβαση για το Τοπίο[90] [Φλωρεντία, 2000] -την οποία η Τουρκία υπέγραψε το 2000, επικύρωσε το 2003[91] και, όσον αφορά στην κατάσταση στην Κύπρο, αγνοεί επιδεικτικά μέχρι και σήμερα- αναδεικνύει τη δυναμική σχέση του χώρου με τον ανθρώπινο παράγοντα, μια σχέση *δράσης* και *διάδρασης*[92], αποτέλεσμα της οποίας είναι το «τοπίο». Κατά συνέπεια, βίαιες επεμβάσεις με σκοπό την αλλοίωση της προκατοχικής μορφής του αστικού τοπίου κατεχομένης Κύπρου, πέραν της συμβολικής τους βαρύτητας η οποία αναλύεται κατωτέρω, ενέχουν εμμέσως πλην σαφώς και σημαντικές ανθρωπιστικές διαστάσεις.

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[87] Βλ. πολύ ενδιαφέρουσα ανάλυση στο Francioni, F. & F. Lenzerini (2003) "The Destruction of the Buddhas of Bamiyan and International Law", *European Journal of International Law*, Vol. 14

[88] Για το πλήρες κείμενο της Διακήρυξης βλ. http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html

[89] Mitchell, W.J.T. (1994) "Landscape and Power." Chicago University Press.

[90] Για το πλήρες κείμενο βλ. http://conventions.coe.int/Treaty/en/Treaties/Html/176.htm

[91] Για πλήρη κατάλογο των Συμβαλλομένων Μερών της Σύμβασης, βλ. http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=176&CM=8&DF=&CL=ENG

[92] Άρθρο 1, παρ. α: "Landscape" means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors;"

Δύο είναι τα πιο χαρακτηριστικά παραδείγματα τέτοιων επεμβάσεων: Η αλλαγή των τοπωνυμιών σε όλες τις κατεχόμενες περιοχές και η χάραξη της τουρκικής σημαίας στο όρος Πενταδάκτυλος.

Η αλλαγή των τοπωνυμιών στα κατεχόμενα εδάφη εντάσσεται εμφανώς στη στρατηγική εξάλειψης της συλλογικής ιστορικής μνήμης των κατοίκων, ώστε με το πέρασμα του χρόνου, να πάψει να υφίσταται οποιαδήποτε αναφορά στην ελληνική παρουσία και ιστορική διαδρομή στις περιοχές αυτές (Μακρίδης, 2005 & 2010). Πρόκειται δηλαδή για ακόμη ένα εργαλείο αφελληνισμού των κατεχομένων εδαφών, το οποίο χρησιμοποιείται με ιδιαίτερο μένος: Όπως καταγγέλλει η Μόνιμη Κυπριακή Επιτροπή Τυποποίησης Γεωγραφικών Ονομάτων (Μ.Κ.Ε.Τ.Γ.Ο.), η αυθαίρετη μετονομασία των ιστορικών τοπωνυμιών του νησιού είναι συστηματική και ιδιαιτέρως προκλητική, καθώς πολλές από τις νέες ονομασίες παραπέμπουν σε Τούρκους πολιτικούς και στρατιωτικούς που διέπρεψαν κατά τη διάρκεια της εισβολής[93]. Κάτι τέτοιο δεν είχε συμβεί ούτε κατά τη διάρκεια της τουρκοκρατίας, ενώ αντιθέτως, πολλά τουρκικά χωριά έφεραν ονόματα χριστιανών αγίων[94] (Λεβέντης, Κ. 1999, Μακρίδης, 2005).

Σημειώνεται ότι επ' αυτού και προκειμένου να κατανοηθεί εις βάθος το μέγεθος της τραγωδίας, αξίζει να μελετήσει κανείς τις πρωτοβουλίες καταγραφής και χαρτογράφησης των βίαιων αφελληνιστικών επεμβάσεων στις κατεχόμενες περιοχές της Κύπρου, μία εκ των οποίων είναι και ο επονομαζόμενος διαδραστικός «χάρτης των εκτοπισμένων ελληνικών κοινοτήτων στην κατεχόμενη Κύπρο[95]», στον οποίο αναφέρονται λεπτομερώς όλα τα παλαιά τοπωνύμια ανά περιοχή, καθώς και οι συνέπειες της τουρκικής εισβολής.

Αυτή τη στιγμή σύμφωνα με στοιχεία της Μόνιμης Κυπριακής Επιτροπής Τυποποίησης Γεωγραφικών Ονομάτων (Μ.Κ.Ε.Τ.Γ.Ο.), οι μετονομασίες

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[93] Χαρακτηριστικό παράδειγμα το χωριό Αγ. Γεώργιος Κερύνειας, το οποίο, κατόπιν μετονομασίας, θα λέγεται "Karaoglanoglu" προς τιμήν του Τούρκου στρατιωτικού που σκοτώθηκε εκεί κατά την τουρκική εισβολή. Τον Καραογλάνογλου υμνεί και ένα από τα τραγούδια των Τούρκων, με τον τίτλο: «*My Cyprus belong to the Turks*» του Musa Korkmaz. Ακόμα πιο προκλητική η περίπτωση του τουρκοκυπριακού χωριού Γαλάτεια, το οποίο μετονομάσθηκε σε "Mehmetcik", κατά την ονομασία του τουρκικού στρατού εισβολής.

[94] Μερικές χαρακτηριστικές αλλαγές τοπωνυμίων είναι οι ακόλουθες: Άγιος Βασίλειος σε Turkeli, Άγιος Ιάκωβος σε Altinova,, Άγιος Συμεών σε Avtepe, Άγιος Γεώργιος (Αμμοχώστου) σε Aygun, Άγιος Θεόδωρος σε Cayirova, Άγιος Χαρίτων σε Ergenekon, Αγία Τριάδα σε Sipahi, Άγιος Νικόλαος σε Yamackoy, Άγιος Ηλίας σε Yarkoy, Άγιος Σέργιος σε Yeni Bogazici, κ.α (Μακρίδης, 2005)

[95] http://kypros.org/Occupied_Villages/indexg.html

παραδοσιακών ενδωνύμων από τις Τουρκικές Αρχές ανέρχονται συνολικά σε 40.000 περίπου. Σε αυτόν τον αριθμό θα πρέπει να προστεθούν οι αλλαγές οδωνύμων και ονομάτων συνοικιών και πλατεών, οι αλλαγές οδοδεικτών καθώς και οδικών πινακίδων, η έκδοση τουριστικών χαρτών με τα εκτουρκισθέντα τοπωνύμια, αλλά και η ανεμπόδιστη χρήση αυτών των τουρκικών μετονομασιών σε συνέδρια και λοιπές εκδηλώσεις δημοσίου χαρακτήρα.

Δυστυχώς αυτή η προκλητική και ιστορικώς αλλοιωτική παράμετρος δεν λαμβάνεται υπ' όψιν στο κατά τα άλλα «αμερόληπτο», προωθούμενο Σχέδιο Ανάν για την επίλυση του Κυπριακού Ζητήματος (Μακρίδης, 2005), καθώς στους συνημμένους χάρτες υιοθετούνται «*σιωπηρώς και ανενδοιάστως*» οι τουρκικές μετονομασίες, όπως δεν φαίνεται να λαμβάνονται υπ' όψιν και οι επεκτατικές τουρκικές φιλοδοξίες για το σύνολο του Νησιού[96].

Ωστόσο, στο μέσον αυτών των απογοητευτικών εξελίξεων, αξίζει να αναφερθεί και μία μικρή επιτυχία της Κύπρου σε διεθνές επίπεδο: Το 2007, κατά την Ένατη Διάσκεψη των Ηνωμένων Εθνών για την τυποποίηση των γεωγραφικών ονομάτων και την Εικοστή Τέταρτη Σύνοδο της ομάδας εμπειρογνωμόνων των Ηνωμένων Εθνών για τα γεωγραφικά ονόματα, που έλαβαν χώρα στη Νέα Υόρκη[97] και σε συνέχεια της προσφυγής της Κύπρου στην Τρίτη Διάσκεψη των Ηνωμένων Εθνών με αφορμή τις αλλαγές των επισήμων τοπωνυμίων της από τις τουρκικές κατοχικές δυνάμεις, διακηρύχθηκε καθολικά η σημασία των τοπωνυμίων κάθε χώρας, ως μέρους της ιστορικής και πολιτιστικής κληρονομιάς των λαών (βλ. ενότητα IX/4[98] της Έκθεσης Πεπραγμένων της Διάσκεψης) και υπογραμμίστηκε η ανάγκη προστασίας των τοπωνυμίων και αποτροπής κάθε προσπάθειας αλλαγής τους από ξένους.

Από την άλλη πλευρά και συμπληρωματικώς της ίδιας φιλοσοφίας, η γιγαντιαία σημαία στον Πενταδάκτυλο, εθνικιστικό σύμβολο του κατακτητή, χαράχθηκε με σκοπό να *παραμείνει* και να *φαίνεται*. Πρόκειται για ένα έργο το οποίο καλύπτει μία επιφάνεια 216.000 τετραγωνικών μέτρων, συνοδευόμενο από

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[96] Ο Γιάννης Μιγκριώτης στο βιβλίο του «*Ο επεκτατισμός στην τουρκική ποίηση*» (Εκδ. ΡΗΣΟΣ, 1991) έχει συγκεντρώσει ποιήματα και τραγούδια που εμφορούνται από αυτή την επεκτατική ιδεολογία και τίθενται ευφυώς, μέσω της λαϊκής κουλτούρας, στην υπηρεσία της χειραγώγησης συνειδήσεων.

[97] Για το πλήρες κείμενο της Έκθεσης Πεπραγμένων της Διάσκεψης, βλ. http://unstats.un.org/unsd/geoinfo/ungegn/docs/9th-uncsgn-docs/report%20of%209th%20uncsgn%20n0750902%20en.pdf

[98] "...*Recognizing* that toponyms are indeed part of the intangible cultural heritage,..."

την φράση του Κεμάλ Ατατούρκ: «Τι χαρά να είμαι Τούρκος!». Ασφαλώς η θέση της δεν είναι διόλου τυχαία: Τοποθετήθηκε ακριβώς επί του νοητού άξονα που συνδέει τη Νικοσια με το λιμάνι της Κερύνειας, στην προέκταση του οποίου βρίσκεται η Τουρκία. Δεν είναι τυχαίο ότι αυτή ήταν και η στρατηγική γραμμή εισβολής που ακολουθήθηκε από τις τουρκικές στρατιωτικές δυνάμεις κατά τα τραγικά γεγονότα το καλοκαίρι του 1974.

Κάτι τέτοιο καταδεικνύει τη συμβολική σημασία της σημαίας, ως ορόσημο – στην κυριολεξία- όχι μόνο της *κατάκτησης* ως αποτέλεσμα της τουρκικής εισβολής, αλλά και της *διαδρομής* προς την κατάκτηση, μιας διαδρομής βίαιης και απάνθρωπης, για την οποία όμως οι κατακτητές αισθάνονται υπερήφανοι - χαρακτηριστική είναι η προσπάθειά τους να καταχωρηθεί η σημαία στο βιβλίο Γκίνες ως η μεγαλύτερη φωταγωγημένη σημαία του κόσμου, προσπάθεια που μέχρι σήμερα[99] δεν έχει ευοδωθεί-. Η σημαία, κατ' αυτή την έννοια λοιπόν, αποτελεί σφραγίδα επιβεβλημένης ισχύος, η οποία, σαν σημάδι από πυρωμένο σίδερο[100], τοποθετήθηκε για να μείνει εκεί ες αεί, αντανακλώντας τις τουρκικές φιλοδοξίες για το νησί.

Ταυτόχρονα, το μέγεθος, το χρώμα και η έντονη αντίθεση του μνημείου αυτού-ορατού σε ακτίνα μιλίων- με τον περιβάλλοντα χώρο, σηματοδοτούν την επιθυμία των κατακτητών για αναγνώριση και νομιμοποίηση μιας επίπλαστης *προέλευσης* και *ταυτότητας* του βορείου τμήματος της Κύπρου[101] (Papalexandrou, 2007): *προέλευσης* πλασματικά τουρκικής, κατασκευασμένης από τις ορδές των Τούρκων εποίκων που συνέρρεαν στο νησί μετά την εισβολή, και *ταυτότητας* επίσης κατασκευασμένης, τουρκοκεντρικής μεν αλλά ασύνδετης με την πραγματική ιστορική παρουσία του τουρκικού στοιχείου στην περιοχή.

Ο καταλληλότερος τρόπος για να ολοκληρωθεί το παρόν Κεφάλαιο, είναι μία αναφορά στην γραπτή Κοινοβουλευτική Ερώτηση προς την Ευρωπαϊκή Επιτροπή,

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[99] Στοιχεία Φεβρουαρίου 2012.

[100] Για τη σημειολογία του "*μαρκαρίσματος*" βλ. ενδεικτικά Schildkrout, E. (2004) "Inscribing the Body" Annual Review of Anthropology, Vol.33

[101] Ο Νάσσος Παπαλεξάνδρου, στο άρθρο του στην Stanford Journal of Archaeology με τίτλο "Constructed Landscapes: Visual Cultures of Violent Contact" (2007) υποστηρίζει ότι το μέγεθος και η επιβλητικότητα του εν λόγω μνημείου μαρτυρούν ουσιαστικά την ανασφάλεια των κατακτητών, η οποία πηγάζει από την επαγκίστρωσή τους σε ένα μη αναγνωρισμένο και μη αναγνωρίσιμο σε διεθνές επίπεδο, καθεστώς κυριαρχίας. Βλ επίσης σχετικά και Talmon, S. (2006) "*Collective Non-recognition of Illegal States. Legal Foundations and Consequences of an Internationally Co-ordinated Sanction with Particular Reference to the Turkish Republic of Northern Cyprus.*"

που κατέθεσε στις 20 Δεκεμβρίου 2012[102] η ευρωβουλευτής κα Αντιγόνη Παπαδοπούλου με αίτημα γραπτής απάντησης:

«1. *Για ποιον λόγο παραβλέπει την παρουσία της εν λόγω παράνομης σημαίας στον Πενταδάκτυλο, η οποία υπενθυμίζει προκλητικά τη διχοτόμηση του νησιού, καταστρέφοντας κατ' αυτόν τον τρόπο τις γέφυρες για επανένωση των δύο κοινοτήτων...*

2. *Τι προσπαθεί να επιτύχει η τουρκική πλευρά προτείνοντας την υποψηφιότητα της εν λόγω παράνομης σημαίας για το βιβλίο των παγκόσμιων ρεκόρ Γκίνες εάν όχι να αναβαθμίσει το ψευδοκράτος ως μια ξεχωριστή οντότητα, παρόλο που δεν έχει αναγνωρισθεί από τη διεθνή κοινότητα;*

3. *Για ποιον λόγο επιτρέπεται στην Τουρκία, μια υποψήφια προς ένταξη χώρα, να επιδεικνύει τέτοια αδιαλλαξία και αλαζονεία απέναντι στην Κύπρο, χωρίς καθόλου κυρώσεις;*»

Η απάντηση[103] του Κοινοτικού Επιτρόπου κ. Füle, εξ ονόματος της Ευρωπαϊκής Επιτροπής, ήταν χαρακτηριστική και -ενδεικτική θα υποστήριζε κανείς- της γενικότερης στάσης της Ε.Ε. για το Κυπριακό ζήτημα: «*Η συνολική διευθέτηση του Κυπριακού στο πλαίσιο του Οργανισμού Ηνωμένων Εθνών (ΟΗΕ) αποτελεί την καλύτερη λύση για τα προβλήματα που αναφέρει το Αξιότιμο Μέλος του Κοινοβουλίου στις ερωτήσεις του. Η ΕΕ αναμένει από την Τουρκία να υποστηρίξει ενεργά τις διαπραγματεύσεις που αποβλέπουν σε συνολική διευθέτηση του Κυπριακού στο πλαίσιο του Οργανισμού Ηνωμένων Εθνών, σύμφωνα με τις σχετικές αποφάσεις του Συμβουλίου Ασφαλείας του ΟΗΕ και τις θεμελιώδεις αρχές που διέπουν την Ένωση. Η δέσμευση της Τουρκίας και η συμβολή της με συγκεκριμένες ενέργειες σε αυτή τη συνολική διευθέτηση έχει ζωτική σημασία. Η Επιτροπή έχει επανειλημμένως καλέσει τους ηγέτες και των δύο κοινοτήτων στην Κύπρο να αδράξουν την ευκαιρία των διεξαγόμενων συνομιλιών για την επίτευξη συνολικής διευθέτησης.*»

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[102] Βλ. http://antigonipapadopoulou.com/ep_archive.aspx#!prettyPhoto/0/

[103] Βλ. http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2011-012514&language=EL

## Κεφάλαιο 2ον
## Η ανθρωπιστική διάσταση της τουρκικής εισβολής και κατοχής.

Η συστηματική σύληση της πολιτιστικής κληρονομιάς στην κατεχόμενη Κύπρο ήταν μία μόνο διάσταση της τουρκικής παρουσίας από το 1974 και έπειτα. Η δεύτερη και ακόμα σημαντικότερη διάσταση της τουρκικής εισβολής και κατοχής ήταν η παραβίαση των ανθρωπίνων δικαιωμάτων, η οποία, δυστυχώς, συνεχίζεται και μέχρι τις μέρες μας (βλ. ενδεικτικά τις Εκθέσεις Προόδου της Τουρκίας για το 2010 και το 2011[104]) καταπατώντας συστηματικά το Ευρωπαϊκό και Διεθνές Δίκαιο Ανθρωπίνων Δικαιωμάτων (Coufoudakis, 2008).

Οι επίσημες πηγές στις οποίες συνοψίζονται οι παραβιάσεις των ανθρωπίνων δικαιωμάτων από τις τουρκικές κατοχικές δυνάμεις στην Κύπρο είναι πολλές. Ήδη από τον Ιούνιο του 1977, στην εμπιστευτική Έκθεση της Επιτροπής Ανθρωπίνων Δικαιωμάτων του Συμβουλίου της Ευρώπης[105], η οποία εκπονήθηκε σε συνέχεια των Κυπριακών καταγγελιών για σοβαρές παραβιάσεις ανθρωπίνων δικαιωμάτων από τις κατοχικές δυνάμεις, γίνεται εκτενής αναφορά.

Ενδεικτικά αναφέρουμε κάποιες από τις πιο πρόσφατες πηγές[106]:

- ✓ Πόρισμα του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων για την υπόθεση Κύπρος vs Τουρκία[107] [Μάιος 2001]

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[104] Για τα πλήρη κείμενα των Εκθέσεων, βλ. :
-Έκθεση Προόδου της Ευρωπαϊκής Επιτροπής για την Τουρκία [2010]
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf

-Έκθεση Προόδου της Ευρωπαϊκής Επιτροπής για την Τουρκία [2011]
http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf

[105] Η Έκθεση δεν δημοσιοποιήθηκε επισήμως, αλλά διέρρευσε και είδε τελικά το φως της δημοσιότητος σε τεύχος της εφημερίδος Καθημερινή, στις αρχές του 1978.

[106] Βλ . επίσης σχετικά
- "Turkish Policy in Cyprus: Continued Violation of Human Rights and systematic destruction of our cultural heritage." Cultural Association of Assia.
- "Question of the violation of human rights and fundamental Freedoms in any part of the world, including: Question of human rights in Cyprus" UN Economic and Social Council, 60th Session of the Commission on Human Rights, 2004
- "Comments on the U.S. Department of State Country Report on Human Right Practices in Cyprus." International Association of Human Rights in Cyprus, 2005
- "Human Rights Violations in Cyprus by Turkey" Press and Information Office, Republic of Cyprus. 2008

Σύμφωνα με το εν λόγω πόρισμα, η Τουρκία κρίνεται υπεύθυνη για την διάπραξη σοβαρών και επαναλαμβανόμενων παραβιάσεων ανθρωπίνων δικαιωμάτων, τα οποία προστατεύονται από την Ευρωπαϊκή Σύμβαση για τα Ανθρώπινα Δικαιώματα[108]. Ειδικότερα, παραβιάζονται τα ακόλουθα:

- Άρθρο 8 της Σύμβασης, λόγω της συνεχιζόμενης απαγόρευσης επιστροφής σε πάνω από 200.000 Ελληνοκυπρίους που αναγκάστηκαν να εγκαταλείψουν τις εστίες τους.
- Άρθρο 1 του Πρωτοκόλλου 1 της Σύμβασης, λόγω της άρνησης της ιδιοκτησίας στους Ελληνοκυπρίους που αναγκάσθηκαν να εγκαταλείψουν τις εστίες τους και άρνησης καταβολής αντίστοιχων αποζημιώσεων.
- Άρθρα 2, 3 και 5 της Σύμβασης, λόγω της παρατεινόμενης αποτυχίας των Τουρκικών Αρχών να διερευνήσουν την τύχη των εξαφανισθέντων κατά τα τραγικά γεγονότα του 1974, κάποιοι εκ των οποίων φαίνεται ότι βρίσκονταν υπό τουρκική κράτηση την περίοδο της εξαφάνισής τους.

✓ Έκθεση της Επιτροπής Ανθρωπίνων Δικαιωμάτων των Ηv. Εθνών για την παραβίαση των ανθρωπίνων δικαιωμάτων και θεμελιωδών ελευθεριών στην Κύπρο[109]. [Μάρτιος 2005].

Σύμφωνα με την εν λόγω Έκθεση, από το 1974 κι έπειτα παρατηρούνται σοβαρές παραβιάσεις ανθρωπίνων δικαιωμάτων στην Κύπρο, όπως παραβίαση της ελευθερίας κυκλοφορίας[110], των δικαιωμάτων ιδιοκτησίας, της θρησκευτικής ελευθερίας, της ελευθερίας έκφρασης, της ελευθερίας ψήφου, των οικονομικών, κοινωνικών και πολιτιστικών δικαιωμάτων, καθώς και των ανθρωπίνων δικαιωμάτων που άπτονται του ζητήματος των αγνοουμένων.

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[107] Βλ. http://cmiskp.echr.coe.int/tkp197/view.asp?item=8&portal=hbkm&action=html&highlight=Cyprus%20|%20v.%20|%20Turkey&sessionid=78235938&skin=hudoc-en

[108] Για το πλήρες κείμενο της Σύμβασης, βλ. http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/

[109] Βλ. http://daccess-ods.un.org/TMP/3214975.89349747.html

[110] Σύμφωνα με την Έκθεση, η μερική άρση των περιορισμών στην ελεύθερη κυκλοφορία, στην πράξη, δεν έχει αλλάξει ριζικά την κατάσταση.

✓ Έκθεση του Γραφείου της Ύπατης Αρμοστείας των Ηv. Εθνών για το Δικαίωμα στην Αλήθεια[111] [Φεβρουάριος 2006] και ετήσιες Εκθέσεις [2007, 2008, 2009][112]

Σύμφωνα με την εν λόγω Έκθεση και βάσει των Αρχών της Διακήρυξης 2005/81 της Επιτροπής Ανθρωπίνων Δικαιωμάτων των Ηνωμένων Εθνών[113] το Δικαίωμα στην Αλήθεια σε περιπτώσεις σοβαρών παραβιάσεων του ανθρωπιστικού δικαίου αναφέρεται στο δικαίωμα των θυμάτων και των οικογενειών τους να γνωρίζουν την αλήθεια σχετικά με τα γεγονότα και τις συνθήκες των παραβιάσεων, τους λόγους που αυτές έλαβαν χώρα, καθώς και την ταυτότητα των συμμετεχόντων σε αυτές.

Το Ευρωπαϊκό Δικαστήριο Ανθρωπίνων Δικαιωμάτων αναφέρεται στο Δικαίωμα στη Αλήθεια ως παράμετρο του Δικαιώματος στην πρόσβαση σε διερευνητικές διαδικασίες (*investigatory procedures*), στην ενημέρωση επί όλων των λεπτομερειών και στην αποζημίωση των θυμάτων και των οικογενειών τους σε περιπτώσεις απαγωγών, εξαφανίσεων, βασανιστηρίων, παραδικαστικών εκτελέσεων και λοιπών εγκλημάτων. Ως εκ τούτου, η παραβίαση των Άρθρων 2,3 και 5 της Σύμβασης για τα Ανθρώπινα Δικαιώματα –σχετικά με την τύχη των αγνοουμένων-, ισοδυναμεί με έμμεση παραβίαση και του Δικαιώματος στην Αλήθεια.

✓ Πόρισμα του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων για την υπόθεση Βαρνάβα vsΤουρκία[114] [Σεπτέμβριος 2009]

Σύμφωνα με το εν λόγω πόρισμα για τη συγκεκριμένη υπόθεση εννέα αγνοουμένων ατόμων από το 1974, η Τουρκία κρίθηκε ένοχη κατά παράβαση του Άρθρου 2 της Ευρωπαϊκής Σύμβασης για τα Ανθρώπινα Δικαιώματα.

✓ Έκθεση Προόδου της Τουρκίας[115] [Ευρωπαϊκή Επιτροπή, 2010]

[111] Για το πλήρες κείμενο της έκθεσης βλ. http://www.unhcr.org/refworld/docid/46822b6c2.html

[112] Βλ. Βιβλιογραφικές αναφορές για σχετικούς συνδέσμους.

[113] Για το πλήρες κείμενο, βλ. http://www.unhcr.org/refworld/category,LEGAL,UNCHR,,,45377c930,0.html

[114] Για το πλήρες κείμενο του πορίσματος βλ. http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Varnava&sessionid=78236040&skin=hudoc-en

✓ Έκθεση προόδου της Τουρκίας[116] [Ευρωπαϊκή Επιτροπή, 2011]

Σύμφωνα με τις συγκεκριμένες Εκθέσεις, δεν έχει σημειωθεί σημαντική ουσιαστική πρόοδος όσον αφορά στην προστασία των ανθρωπίνων δικαιωμάτων στην Τουρκία, γεγονός το οποίο αντανακλάται και στις τουρκικές πρακτικές στην κατεχόμενη Κύπρο.

Παρ' όλο που επικύρωσε τον Σεπτέμβριο του 2011 το Προαιρετικό Πρωτόκολλο (Optional Protocol) της Σύμβασης των Ηνωμένων Εθνών ενάντια στα Βασανιστήρια[117], η Τουρκία εξακολουθεί να μην έχει επικυρώσει τρία επιπρόσθετα Πρωτόκολλα (Additional Protocols) της Ευρωπαϊκής Σύμβασης για τα Ανθρώπινα Δικαιώματα. Επιπλέον, σύμφωνα με στοιχεία του Ευρωπαικού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων, οι προσφυγές κατά της Τουρκίας για παραβιάσεις συνέχισαν την ανοδική τους πορεία για πέμπτο συνεχόμενο έτος, με 7.764 νέες προσφυγές από τον Οκτώβριο του 2010, αγγίζοντας τον Σεπτέμβριο του 2011 τις 18.432 συνολικές εκκρεμείς προσφυγές κατά της Τουρκίας.

Όπως αναφέρεται χαρακτηριστικά στην Ενότητα της τελευταίας Έκθεσης σχετικά με την Κύπρο, «παρά τις κατ' επανάληψη κλήσεις της Ευρωπαϊκής Επιτροπής και του Συμβουλίου της Ευρωπαϊκής Ένωσης, εκτός του ότι δεν έχει ακόμα εκπληρώσει τις υποχρεώσεις της που απορρέουν από τα πορίσματα των υποθέσεων *Κύπρος vs Τουρκίας*, *Βαρνάβα vs Τουρκίας*, *Ξενίδης-Αρέστης vs Τουρκίας* κ.ά., η Τουρκία ακόμα δεν έχει εκπληρώσει τις υποχρεώσεις της όπως αυτές διατυπώνονται στην Διακήρυξη της Ευρωπαϊκής Κοινότητας και των Κρατών-Μελών της για τη διεύρυνση της Ε.Ε., της 21ης Σεπτεμβρίου 2005[118],

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[115] Βλ. [Παράρτημα ΙΙΙ]
http://ec.europa.eu/enlargement/pdf/key.../**2010**/package/tr_rapport_**2010**_en.pdf

[116] Για το πλήρες κείμενο της Έκθεσης, βλ.
http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf

[117] Για το πλήρες κείμενο της Σύμβασης βλ. http://www.hrweb.org/legal/cat.html
Για το πλήρες κείμενο του Προαιρετικού Πρωτοκόλλου της Σύμβασης βλ.
http://www2.ohchr.org/english/law/cat-one.htm

[118] http://www.europa-eu-un.org/articles/en/article_5045_en.htm
Στη Διακήρυξη αναφέρεται ρητά ότι:
"*3. The European Community and its Member States stress that the opening of negotiations on the relevant chapters depends on Turkey's implementation of its contractual obligations to all Member States. Failure to implement its obligations in full will affect the overall progress in the negotiations.*
*4. The European Community and its Member States recall that the Republic of Cyprus became a Member State of the European Union on 1st May 2004. They underline that they recognise only the*

και στα συμπεράσματα του Συμβουλίου, του Δεκεμβρίου του 2006[119], του Δεκεμβρίου του 2009[120] και του Δεκεμβρίου του 2010[121]» Πρόκειται ουσιαστικά για αναφορές στις συμβατικές υποχρεώσεις της Τουρκίας προς όλα τα κράτη-μέλη της Ε.Ε., συμμόρφωση με τις οποίες αποτελεί προϋπόθεση προσχώρησης.

Τα ανωτέρω στοιχεία καταδεικνύουν σχηματικά μόνο[122] το εύρος των παραβιάσεων των ανθρωπίνων δικαιωμάτων στο κατεχόμενο έδαφος της Κύπρου. Η πραγματικότητα όμως, είναι πολύ πιο συγκλονιστική. Παρ' όλο που η αναλυτική παρουσίαση των παραβιάσεων υπερβαίνει τους στόχους του παρόντος, μια συνοπτική κατηγοριοποίηση των εγκλημάτων θα περιελάμβανε τα εξής[123]:

- Εισβολή και συνεχιζόμενη κατοχή.
- Παράνομες κρατήσεις.
- Επιθέσεις-βασανιστήρια-δολοφονίες.
- Βιασμοί και καταναγκαστική πορνεία.
- Βίαιος εκτοπισμός πληθυσμών.
- Εποικισμός-αλλοίωση του δημογραφικού χαρακτήρα της Νήσου[124].
- Εθνική κάθαρση
- Σφετερισμός περιουσιών και παράνομη εκμετάλλευση κατεχόμενου εδάφους[125].

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*Republic of Cyprus as a subject of international law.*
*5. Recognition of all Member States is a necessary component of the accession process. Accordingly, the EU underlines the importance it attaches to the normalisation of relations between Turkey and all EU Member States, as soon as possible."*

[119] Βλ. www.eu2008.fr/.../**Council conclusions** on%20Enlargement_EN.pdf
[120] Βλ. www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/.../111830.pdf
[121] Βλ. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/118578.pdf

[122] Βλ. εξαιρετικά διεισδυτικό άρθρο της Adamantia Pollis, (1979) "Cyprus: Nationalism vs Human Rights" Universal Human Rights, Vol.1. Ιδιαιτέρως ενδιαφέρουσα η επιχειρηματολογία της επί του γεγονότος ότι στις εκθέσεις που δημοσιεύονταν εκείνη την εποχή σχετικά με τις παραβιάσεις των ανθρωπίνων δικαιωμάτων στην Κύπρο από τις τουρκικές κατοχικές δυνάμεις, δεν σκιαγραφείται ούτε το πραγματικό εύρος, ούτε το πραγματικό βάθος της τραγωδίας για Ελληνοκυπρίους και Τουρκοκυπρίους. Σύμφωνα με τη συγγραφέα, οι σχετικές αναλύσεις ήταν επιφανειακές και αναλώνονταν στην απλοϊκή και πλημμελή καταγραφή βιαιοπραγιών, αγνοώντας άλλες διαστάσεις των παραβιάσεων, όπως ο βίαιος εκτοπισμός πληθυσμών και ο σφετερισμός περιουσιών.

[123] Βλ. "Human Rights Violations in Turkey". Press and Information Office, Republic of Cyprus. 2008

[124] Κατά παραβίαση του Άρθρου 49 της τέταρτης Συνθήκης της Γενεύης του 1949.

[125] Βλ. σχετικά Πόρισμα Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων για την υπόθεση Λοιζίδου vs Τουρκία.[1998]
http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/9FA86D7ABD13926FC22571D2002BB50D/$file/Article%2050.pdf?OpenElement

- Αγνοούμενοι-εγκλωβισμένοι-πρόσφυγες.[126]
- Καταπάτηση ελευθερίας έκφρασης[127].
- Καταπάτηση θρησκευτικών ελευθεριών[128]

Όλα τα ανωτέρω συμβαίνουν μέχρι και σήμερα, παρά τις επανειλημμένες συστάσεις της διεθνούς κοινότητος για συμμόρφωση της Τουρκίας και ανάληψη των υποχρεώσεών της στο πλαίσιο των επιταγών του Διεθνούς Ανθρωπιστικού Δικαίου. Ενδεικτικά αναφέρουμε κάποια από τα Ψηφίσματα της Επιτροπής Ανθρωπίνων Δικαιωμάτων των Ηνωμένων Εθνών που αφορούν στην Τουρκία:

-Ψήφισμα 4 (XXXI) της Επιτροπής Ανθρωπίνων Δικαιωμάτων των Η.Ε. [1975] [129]
-Ψήφισμα 4 (XXXII) της Επιτροπής Ανθρωπίνων Δικαιωμάτων των Η.Ε. [1976][130]
-Ψήφισμα 17 (XXXIV) της Επιτροπής Ανθρωπίνων Δικαιωμάτων των Η.Ε. [1978][131]

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[126] Βλ. σχετικά -Έκθεση της Επιτροπής Μετανάστευσης, Προσφύγων & Δημογραφίας του Συμβουλίου της Ευρώπης [«Έκθεση Κουκό»1992] http://www.moi.gov.cy/moi/pio/pio.nsf/All/20C7614D06858E9FC2256DC200380113/$file/cuco%20report.pdf?OpenElement

-Έκθεση της Επιτροπής Μετανάστευσης, Προσφύγων & Δημογραφίας του Συμβουλίου της Ευρώπης [«Έκθεση Λάξο»2003] http://assembly.coe.int/Documents/WorkingDocs/doc03/edoc9799.htm καθώς και την Διακήρυξη 47/133 των Η.Ε για την Προστασία όλων των ατόμων από βίαιη εξαφάνιση [1992] http://www2.ohchr.org/english/law/disappearance.htm, την οποία επίσης αγνοεί η Τουρκία.

[127] Βλ. σχετικά -Έκθεση της Επιτροπής Ανθρωπίνων Δικαιωμάτων Ην. Εθνών για την παραβίαση των ανθρωπίνων δικαιωμάτων και θεμελιωδών ελευθεριών στην Κύπρο [2005] http://daccess-ods.un.org/TMP/3214975.89349747.html
-"Comments on the U.S. Department of State Country Report on Human Right Practices in Cyprus."International Association of Human Rights in Cyprus. [2005]
-Έκθεση της Επιτροπής Ανθρωπίνων Δικαιωμάτων Ην. Εθνών για την παραβίαση των ανθρωπίνων δικαιωμάτων και θεμελιωδών ελευθεριών στην Κύπρο [2005] http://daccess-ods.un.org/TMP/3214975.89349747.html
-Εκθέσεις Προόδου της Τουρκίας 2010, 2011
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf
http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf

[128] Βλ. αναλυτικά "Religious Freedom and Holy Sites in the Republic of Cyprus" Representation of the Church of Cyprus to the European Union, 2010

[129] Για το πλήρες κείμενο, βλ. http://www.un.int/cyprus/chrd75.htm

[130] Για το πλήρες κείμενο, βλ. http://www.un.int/cyprus/chrd76.htm

[131] Για το πλήρες κείμενο, βλ. http://www.un.int/cyprus/chrd78.htm

-Ψήφισμα 1987/50 της Υποεπιτροπής των Η.Ε. για την πρόληψη των Διακρίσεων και την προστασία των Μειονοτήτων [1987][132]

Χαρακτηριστικό επίσης είναι και το γεγονός ότι η μη συμμόρφωση της Τουρκίας προς τις αποφάσεις του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων για το ζήτημα των αγνοουμένων -σε συνέχεια τεσσάρων προσφυγών της Κύπρου εναντίον της Τουρκίας, τις υπ' αρ. 67801/74, 6950/75, 8007/77 και 25781/94) οδήγησε στην υιοθέτηση από την Επιτροπή Υπουργών του Συμβουλίου της Ευρώπης του μοναδικού μέχρι στιγμής -για διακρατική υπόθεση- Ενδιάμεσου Ψηφίσματος στις 10 Μαίου 2001, το οποίο απαιτούσε από την Τουρκία άμεση εφαρμογή των αποφάσεων του ΕΔΑΔ.

Λαμβάνοντας υπ' όψιν τα παραπάνω, σε συνδυασμό με τη συστηματική καταστροφή της πολιτιστικής κληρονομιάς στην κατεχόμενη Κύπρο, αλλά και τη γενικότερη στάση της Τουρκίας στο πλαίσιο των διαπραγματεύσεων επίλυσης του ζητήματος, καθίστανται προφανείς οι γεωπολιτικές προθέσεις της σε βάθος χρόνου -για τις οποίες υπήρχαν μικρά περιθώρια αμφιβολίας- αλλά, κυρίως, η *ιδεολογική παράμετρος* της Τουρκικής εξωτερικής πολιτικής, η οποία είναι καθοριστική αυτών των προθέσεων και, ταυτόχρονα ακλόνητη από τις επιταγές του Διεθνούς Δικαίου.

Τα παραδείγματα της εφαρμογής αυτής της παραμέτρου στην πράξη είναι πολλά[133]. Ενδεικτικά επισημαίνεται ότι τον Μάρτιο του 2011, με πρωτοβουλία της

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[132] Για το πλήρες κείμενο, βλ. http://www.un.int/cyprus/schrd87.htm

[133] Τον Ιούλιο του 2011, ο Τούρκος Πρωθυπουργός Ρετζέπ Ταγίπ Ερντογάν, με το πέρας της επίσκεψής του στα κατεχόμενα με αφορμή την έκρηξη στη ναυτική βάση «Ευάγγελος Φλωράκης», δήλωσε ότι δεν θα τον εξέπλησσε ενδεχόμενη «*κατάρρευση της οικονομίας της **ελληνοκυπριακής διοίκησης***» όπως απεκάλεσε την Κυπριακή Δημοκρατία, «*όπως ακριβώς συνέβη και στην Ελλάδα.*» Λίγες ημέρες αργότερα δήλωνε ευθαρσώς ότι «*Δεν υπάρχει ανεξάρτητο κράτος με το όνομα Κύπρος. Σε περίπτωση που δώσουν στη Νότια Κύπρο την προεδρία της ΕΕ, εμείς δεν τους αναγνωρίζουμε*» .

Τον Αύγουστο του 2011, ο Τούρκος Υπουργός Εξωτερικών Αχμέτ Νταβούτογλου, με αφορμή τις προθέσεις της Κυπριακής Δημοκρατίας να προχωρήσει σε γεωτρήσεις για εξόρυξη υδρογονανθράκων το Φθινόπωρο, προειδοποίησε ότι «*εάν τεθεί θέμα περισσότερων προωθημένων βημάτων, θα επιδείξουμε την απαιτούμενη αντίδραση*».

Αμέσως μετά ακολούθησε ανακοίνωση του Τουρκικού Υπουργείου Εξωτερικών στην οποία παρατίθεται η επιχειρηματολογία της Τουρκίας ως προς το μη δικαίωμα της Κυπριακής Δημοκρατίας να προχωρήσει στις έρευνες ενεργειακών κοιτασμάτων, επικαλούμενη το Διεθνές Δίκαιο ενόσω παραμένει μία εκ των λίγων χωρών για τις οποίες εκκρεμεί κύρωσης της Διεθνούς Σύμβασης για το Δίκαιο της Θάλασσας.

Οι δηλώσεις σε αυτό τον τόνο συνεχίστηκαν μέχρι την έναρξη των ερευνών, οπότε και ξεκίνησε και η ρητορική των «αντιποίνων» προς τις εταιρείες που συμμετέχουν στις γεωτρήσεις πετρελαίου και φυσικού αερίου στην Κύπρο, ρητορική η οποία μέχρι τον Μάιο του 2012 συνεχίζεται.

Τον Απρίλιο του 2012, με αφορμή την περιορισμένης έκτασης φωτιά που ξέσπασε στο στέγαστρο του τεμένους Köprülü Hacı İbrahim Ağa στην Λεμεσό, ο αρχηγός του ψευδοκράτους Derviş Eroğlu, δήλωσε «αυτή είναι η νοοτροπία των Ρωμιοκυπρίων». Επίσης, τον ίδιο μήνα, πιστός στις δηλώσεις του εννέα μήνες νωρίτερα, ο Τούρκος Πρωθυπουργός Ρετζέπ Ταγίπ Ερντογάν σε κοινή συνέντευξη τύπου στην Άγκυρα με τον Φιλανδό πρωθυπουργό Γίρκι Κατάινεν δήλωνε

Εκκλησίας της Κύπρου, προσεκλήθησαν οι ευρωβουλευτές J. Walesa, A. Zasada και M. Nedelcheva, να επισκευθούν τα κατεχόμενα εδάφη της Κύπρου[134], ώστε να διαπιστώσουν ιδίοις όμασι την συνεχιζόμενη καταστροφή της πολιτιστικής κληρονομιάς αλλά και την καταπάτηση των ανθρωπίνων δικαιωμάτων, ιδίως δε της θρησκευτικής ελευθερίας. Η επίσκεψη αμαυρώθηκε από την σύλληψη των Πολωνών ευρωβουλευτών και των εκπροσώπων του Γραφείου της Εκκλησίας της Κύπρου στις Βρυξέλλες[135] στον περίβολο του Ιερού Ναού της Αγίας Ζώνης στην Αμμόχωστο. Μάλιστα, οι τελευταίοι επρόκειτο να δικαστούν σε «δικαστήριο» του ψευδοκράτους, ενώ τελικά τους επεβλήθη πρόστιμο για «παράνομη είσοδο σε στρατιωτικό χώρο».

Παρατηρούμε λοιπόν ότι η καταστροφή της Πολιτιστικής Κληρονομιάς και η καταπάτηση των Ανθρωπίνων Δικαιωμάτων εκ μέρους των κατοχικών δυνάμεων στην Κύπρο, συνδέονται αναπόσπαστα μεταξύ τους και όχι μόνο: αποτελούν βασικές συνιστώσες και εγγράφονται σε μία ευρύτερη στρατηγική πλήρους εκτουρκισμού των κατεχομένων εδαφών και σταδιακής υλοποίησης επεκτατικών φιλοδοξιών οι οποίες, αντί να μετριάζονται με το πέρασμα του χρόνου, αναπαράγονται ες αεί.

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ευθαρσώς ότι η Τουρκία θα κάνει «εξάμηνο διάλειμμα όταν ξεκινήσει η Προεδρία των Ελληνοκυπρίων».

[134] Η επίσκεψη αυτή ερχόταν να προστεθεί σε μία μακρά σειρά επισκέψεων ξένων πολιτικών παραγόντων και ανταποκριτών στην κατεχόμενη Κύπρο, ιδίως από το 2003 και μετά, ήτοι κατόπιν της μερικής άρσης των περιορισμών στην διακίνηση από και προς τα κατεχόμενα το 2003.

[135] Μεταξύ των οποίων και ο Θεοφιλέστατος Χωρεπίσκοπος Νεαπόλεως Πορφύριος

# ΜΕΡΟΣ Γ΄
# Η Πολιτιστική Διπλωματία στην υπηρεσία του Κυπριακού Ζητήματος.

# Κεφάλαιο 1ον :
# Η Πολιτιστική Διπλωματία ως Σύστημα άσκησης εξωτερικής πολιτικής.

*"Οι πραγματικές και μακρόβιες νίκες είναι οι νίκες της ειρήνης"*
Ralph Waldo Emerson

*Διπλωματία, Δημόσια Διπλωματία, Πολιτιστική Διπλωματία.* Συγγενείς όροι, των οποίων η διαφοροποίηση σηματοδοτεί την εξελικτική πορεία της μεθοδολογίας άσκησης εξωτερικής πολιτικής σε διεθνές επίπεδο, ιδίως από το τέλος της εποχής του Ψυχρού Πολέμου και μέχρι σήμερα (ενδεικτικά: Nye, 1990, Kissinger, 1994, Leonard, 2002). Η εγχώρια και διεθνής βιβλιογραφία βρίθει ορισμών για τις έννοιες αυτές, και παρ΄ όλο που η απαρίθμησή τους υπερβαίνει τους στόχους του παρόντος, είναι χρήσιμο να διατυπωθούν ενδεικτικά κάποιοι, έτσι ώστε να καταστεί ευκρινέστερη στη συνέχεια η σχέση τους με την άσκηση εξωτερικής πολιτικής εν γένει, ειδικότερα δε ως προς την επίτευξη συγκεκριμένων πολιτικών επιδιώξεων στρατηγικής σημασίας για την επιβίωση ενός κράτους.

Εκκινώντας από την έννοια της παραδοσιακής διπλωματίας, στο λεξικό της Οξφόρδης, αυτή ορίζεται απλά ως η "διαχείριση των διεθνών σχέσεων μέσω της διαπραγμάτευσης" (Oxford Dictionary). Κάποιοι συγγραφείς εστιάζουν στον διαμεσολαβητικό ρόλο της διπλωματίας, ορίζοντάς την ως την "τέχνη επίλυσης διεθνών δυσκολιών με ειρηνικό τρόπο" (Galtung, 1996)[136]. Ο Χρήστος Γιανναράς, προχωρά αρκετά παραπέρα, εμπλουτίζοντας και εμβαθύνοντας τον ορισμό της διπλωματίας, σύμφωνα με τον οποίο, "*Με τη λέξη διπλωματία σημαίνουμε την επιστήμη ή την τέχνη να αντιπροσωπεύεται επίσημα, με συγκεκριμένα θεσμικά*

[136] Επί της θεματικής της διαχείρισης κρίσεων σε διεθνές επίπεδο η διεθνής βιβλιογραφία είναι πλουσιότατη. Ενδεικτικά αναφέρονται τα εξής:

-Fisher, R. J. (1997). Interactive Conflict Resolution. Syracuse, N.Y.: Syracuse UP.
-Druckman, D. (1997). "Negotiating in the International Context," in I. William Zartman and Lewis Rasmussen, eds., Peacemaking in International Conflict. Washington, D.C.:USIP Press
-Kelman, H. C. (1997). "Social-Psychological Dimensions of International Conflict." in I. William Zartman and Lewis Rasmussen, eds., Peacemaking in International Conflict. Washington, D.C.: USIP Press.
-Kremenyuk,V.(1991). International Negotiation: Analysis, Approaches, Issues. Jossey-Bass.
-Kriesberg, L. (1998). Constructive Conflicts. From Escalation to Resolution. Lanham & Boulder
-Mitchell, C. (1995). "Asymmetry and Strategies of Regional Conflict Resolution." in I. William Zartman and Victor A. Kremenyuk, eds., Cooperative Security. Reducing Third World Wars. Syracuse UP.

*πλαίσια, ένα κράτος στις κυβερνήσεις άλλων κρατών ή σε διεθνείς οργανισμούς. Σημαίνουμε τη δεξιότητα και ικανότητα στη διαχείριση των εξωτερικών σχέσεων μιας πολιτείας.*" (Γιανναράς, 2001).

Στο ίδιο πνεύμα και υπό το πρίσμα μιας ολιστικής προσέγγισης, ο Melissen ορίζει την διπλωματία ως τον "μηχανισμό εκπροσώπησης, επικοινωνίας και διαπραγμάτευσης μέσω του οποίου κράτη και λοιποί διεθνείς δρώντες διευθετούν τις υποθέσεις τους". (Melissen, 2005).

Εκ των ανωτέρω, καθίστανται σαφή τα εξής: α. η *εργαλειακή διάσταση* της διπλωματίας ως μέσο επίτευξης συγκεκριμένων στόχων εξωτερικής πολιτικής στη διεθνή αρένα και β. η *επικοινωνιακή-διαδραστική διάσταση* της διπλωματίας, ως *ανοιχτό*[137] σύστημα δρώντων οι οποίοι επικοινωνούν, συνεργάζονται, ενημερώνονται και διαπραγματεύονται[138] προς επίτευξη των προαναφερθέντων συγκεκριμένων στόχων εξωτερικής πολιτικής.

Αποτέλεσμα της δημιουργικής σε πρακτικό επίπεδο σύζευξης αυτών ακριβώς των δύο εννοιών, ήδη από τη δεκαετία του '60, ήταν η γένεση του όρου "Δημόσια Διπλωματία" (Public Diplomacy). Ο εν λόγω νεότευκτος όρος φαίνεται να χρησιμοποιήθηκε επισήμως για πρώτη φορά το 1965[139], από τον Edmund Guillion, Πρύτανη του Πανεπιστημίου Tufts των ΗΠΑ, με αφορμή την ίδρυση του *Edward R. Murrow*[140] *Center of Public Diplomacy* στο Πανεπιστήμιο Tufts.

Από το 1956 κι έπειτα δε, ο ορισμός της Δημόσιας Διπλωματίας διαμορφώθηκε εξελικτικά, εμπερικλείοντας και έννοιες των Θεωριών Επικοινωνίας και αναγνωρίζοντας την κομβική σημασία του πολιτισμού, της εκπαίδευσης και της

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[137] Σύμφωνα με τη Γενική Θεωρία Συστημάτων ένα σύστημα χαρακτηρίζεται ως *ανοιχτό*, όταν η λειτουργία και η συμπεριφορά του χαρακτηρίζονται από την αλληλεπίδραση με το περιβάλλον εντός του οποίου αναπτύσσεται.

[138] Βλ. Θεωρία Διαπραγμάτευσης (Bargaining Theory) και Θεωρία Κυκλωμάτων Ισχύος (Power Circuits). Ενδεικτικά, Clegg, S.R. (1989),'*Frameworks of Power*', London: Sage

[139] Ωστόσο, ο εν λόγω όρος έκανε την εμφάνισή του για πρώτη φορά τον Ιανουάριο του 1856, στην εφημερίδα '*Times*' του Λονδίνου, σε άρθρο που καυτηρίαζε τις προσπάθειες του Αμερικανού Προέδρου Franklin Pierce[139] να επηρεάσει ευνοϊκά το διεθνές κλίμα έναντι των ΗΠΑ. Έκτοτε και έως το 1965, ο όρος *Δημόσια Διπλωματία* φαίνεται να χρησιμοποιήθηκε αρκετές φορές στην διεθνή δημοσιογραφία και την πολιτική[139], ιδίως δε κατά τον Α΄ Παγκόσμιο Πόλεμο, αποτυπώνοντας και αναδεικνύοντας εννοιολογικά μία αναδυόμενη νέα θεώρηση της διπλωματίας, η οποία, προσδιοριζόμενη συνήθως ως "ανοιχτή διπλωματία", παρέπεμπε συνήθως στην άσκηση στοχευμένης επικοινωνιακής στρατηγικής σε διεθνές επίπεδο (Cull, 2006).

[140] Ο δημοσιογράφος και ανταποκριτής Edward R. Murrow θεωρείται από τις πιο σημαντικές προσωπικότητες της αμερικανικής δημόσιας διπλωματίας. Το 1961 ορίσθηκε επικεφαλής της Αμερικανικής Υπηρεσίας Πληροφοριών, στην οποία παρέμεινε έως το 1964, αποχωρώντας κατόπιν αιτήματός του, υπό την αιτιολογία βεβαρημένου ιατρικού ιστορικού.

ενημέρωσης[141] όχι μόνο σε επίπεδο διακρατικής επικοινωνίας και διαπραγμάτευσης, και άρα σε επίπεδο επίτευξης εθνικών στόχων, αλλά και σε επίπεδο διαχείρισης κρίσεων[142] (ενδεικτικά: Malone, 1988, Tuch 1990). Όπως πολύ χαρακτηριστικά ανέφερε το 1990 ο Joseph Nye διατυπώνοντας την θεωρία του περί *ήπιας ισχύος* (Soft Power), *"η ισχύς ενός κράτους δεν κρίνεται πλέον από τους πόρους του, αλλά από την ικανότητά του να επηρεάζει τη συμπεριφορά άλλων κρατών."* (Nye, 1990).

Ωστόσο, είναι γεγονός ότι ήδη από το 1922 ο Walter Lippmann είχε προδιαγράψει αυτή την εξελικτική, μέσω του μοντέλου στρατηγικής επικοινωνίας που παρουσίασε, σύμφωνα με το οποίο οι διεθνείς δρώντες προσπαθούν να κεντρίσουν το ενδιαφέρον της κοινής γνώμης παγκοσμίως και να δημιουργήσουν συναίνεση επί των θεμάτων που άπτονται των εθνικών συμφερόντων της χώρας τους (Lippmann, 1922).

Έτσι, θα μπορούσαμε ίσως να ισχυρισθεί κανείς ότι, εν τέλει, αυτή η εργαλειακή συλλογιστική των μετέπειτα θεωρητικών[143], βασιζόμενη σε μοντέλα συμπεριφοράς και κατ΄ επέκταση διαπραγμάτευσης μεταξύ των διεθνών δρώντων, τα οποία συνδέονται με τις θεωρίες ισχύος και τις θεωρίες των αγορών, απλά αναπαρήγαγε κάτι το οποίο ήταν γνωστό από τις αρχές του 20ου αιώνα (Gregory, 2005). Από τότε έως σήμερα, η ιδέα παρέμεινε η ίδια: *"Δημόσια Διπλωματία είναι η διαχείριση των εντυπώσεων"*[144] (Meinheim, 2001).

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[141] Σύμφωνα με τον Malone, Δημόσια Διπλωματία είναι ο συνήθης όρος που χρησιμοποιείται για την υλοποίηση εθνικής στρατηγικής σε ξένες χώρες, ιδίως στους τομείς της πληροφόρησης, της εκπαίδευσης και του πολιτισμού. Για εκείνον, στόχος της Δημόσιας Διπλωματίας μιας χώρας είναι να επηρεάσει τους πολίτες άλλων χωρών ώστε να επιτύχει τη θετική τους ανταπόκριση προς τη χώρα αυτή.

[142] Ο Tuch προχωρά ένα βήμα παραπέρα και διατυπώνει την άποψη ότι η Δημόσια Διπλωματία συνιστά στην πραγματικότητα μία άσκηση περιορισμού απωλειών ("a damage limitation exercise"), με σκοπό να ελαχιστοποιηθούν τα λάθη και οι παρανοήσεις που ανακύπτουν πολλές φορές και περιπλέκουν τις σχέσεις μεταξύ των χωρών.

[143] Όπως πολύ χαρακτηριστικά ανέφερε ο καθηγητής Bruce Gregory στην εισήγησή του με τίτλο " Public Diplomacy and Strategic Communication: Cultures, Firewalls and Imported norms", σε συνέδριο της Αμερικανικής Ένωσης Πολιτικής Επιστήμης, *"η Δημόσια Διπλωματία είναι στον πυρήνα της εργαλειακή (instrumental)"*.

[144] Στο σημείο αυτό αξίζει να αναφερθεί η εκτενέστατη διαλεκτική που υφίσταται σε θεωρητικό-ακαδημαϊκό επίπεδο, ως προς την εννοιολογική σχέση της Δημόσιας Διπλωματίας με την προπαγάνδα, παρουσίαση και ανάλυση της οποίας δυστυχώς εκφεύγει του παρόντος. Ενδεικτικά, βλ. Welch, D. (1999) "Powers of Persuasion", *History Today*, Vol.49., Melissen, J. (2005) "Wielding Soft Power: The New Public Diplomacy." *Clingendael:* και Berridge G.R. and James A. (2001) *A Dictionary of Diplomacy*. Basinstoke: Palgrave σύμφωνα με τους οποίους, Δημόσια Διπλωματία ουσιαστικά είναι ένα είδος προπαγάνδας του 20ου αιώνα που ασκείται από τους διπλωματικούς. Ωστόσο, όπως παρατηρεί ο Cull, προκειμένου αυτή η προπαγάνδα να αποβεί επωφελής, θα

Στο σημείο αυτό, θα μπορούσε να διερωτηθεί κανείς ποια είναι η σχέση του πολιτισμού με τη διαχείριση εντυπώσεων ώστε να φθάσουμε να μιλάμε πλέον για *Πολιτιστική Διπλωματία*. Όπως επισημαίνει ο Χρήστος Γιανναράς, "ο όρος *πολιτισμός*, στην ετυμολογική του καταγωγή, δηλώνει το προϊόν της πόλεως, το αποτέλεσμα και τις επιπτώσεις που έχει ο πολιτικός βίος..." (Γιανναράς, 2001). Σύμφωνα με αυτόν τον ορισμό, ο πολιτισμός όχι μόνο είναι αποκύημα της πολιτικής πρακτικής, αλλά, ως εκ τούτου, εμφορείται και από το αξιακό απόθεμα αυτής της πρακτικής, το οποίο σε όρους διεθνών σχέσεων προσανατολίζεται προς την εξυπηρέτηση εθνικών συμφερόντων, με τη χρήση εκτός των τυπικών, και αμιγώς επικοινωνιακών μέσων, ήτοι εργαλείων της Δημόσιας Διπλωματίας. Έτσι, πολιτισμός και Δημόσια Διπλωματία τίθενται παράλληλα στην υπηρεσία της εξωτερικής πολιτικής μιας χώρας, προς ενιαία στρατηγική κατεύθυνση, υπό την σκέπη του όρου "Πολιτιστική Διπλωματία"[145].

Για τους λόγους αυτούς, όπως θα ήταν αναμενόμενο, στη διεθνή βιβλιογραφία ο όρος Πολιτιστική Διπλωματία απαντάται συνήθως στο πλαίσιο αναλύσεων που αφορούν στην Δημόσια Διπλωματία, περισσότερο ως εξειδικευμένη εφαρμογή αυτής παρά ως αυτόνομη εννοιολογική οντότητα. Τα παραδείγματα είναι πολλά: Ο Howard Frederic συμπεριλαμβάνει την έννοια του πολιτισμού στον ορισμό της Δημόσιας Διπλωματίας, αναγνωρίζοντάς τον ως έναν εκ των τομέων κομβικής σημασίας για την άσκηση επιρροής στους πολίτες μιας ξένης χώρας και, κατ΄ επέκταση, στην κυβέρνησή της (Frederic, 1993). Ο Anthony Haigh, θεωρώντας ότι η άσκηση Πολιτιστικής Διπλωματίας εγγράφεται στην σφαίρα των διεθνών πολιτιστικών ανταλλαγών (Haigh, 2001), ουσιαστικά εστιάζει περισσότερο στη διάσταση της διάχυσης της γνώσης επί του πολιτισμού μιας χώρας στο εξωτερικό, παρά στην στρατηγική επίτευξης πολιτικών στόχων αυτής της χώρας διαμέσου της πολιτιστικής διάδρασης.

Στο ίδιο πνεύμα, αλλά προχωρώντας τη συλλογιστική αυτή ένα βήμα παραπέρα, θεωρώντας τις πολιτιστικές ανταλλαγές ως μέσο επίτευξης αμοιβαίας κατανόησης και συνεργασίας μεταξύ των κρατών, το οποίο ενέχει αδήριτη σημασία

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πρέπει να απεκδυθεί των αρνητικών συνεκδοχών της. Εκείνο που εν τέλει διαχωρίζει την προπαγάνδα από την δημόσια διπλωματία είναι το ότι *"η προπαγάνδα προσπαθεί να πει στους ανθρώπους τι να σκεφτούν. Η ενημέρωση και η εκπαίδευση στοχεύουν στη διεύρυνση της αντίληψης του κοινού, ενώ η προπαγάνδα στο αντίθετο."* Cull et al. (2003)

[145] Σύμφωνα με τον Γιανναρά, *"Πολιτιστική Διπλωματία ονομάζουμε τη μεθοδική χρήση στοιχείων του πολιτισμού μιας χώρας κατά την άσκηση διαχείρισης των εξωτερικών της σχέσεων."* (Γιανναράς, 2001)

για την διεξαγωγή επιτυχών διαπραγματεύσεων, ο Gyorgi Szondi προχωρά και ορίζει την Πολιτιστική Διπλωματία ως έναν από τους πυλώνες της εξωτερικής πολιτικής μιας χώρας (Szondi, 2008). Κάπως έτσι αντιλαμβάνεται και ο Taylor την Πολιτιστική Διπλωματία: εξετάζοντάς την υπό το πρίσμα της σχέσης των Μέσων Μαζικής Ενημέρωσης με την πολιτική σε διεθνές επίπεδο. Καταλήγει ότι δεν πρόκειται παρά για κεκαλυμμένη μεθοδολογία προώθησης των εθνικών συμφερόντων μιας χώρας, ήτοι άσκηση εξωτερικής πολιτικής υπό την πρόφαση και στο πλαίσιο του διαπολιτισμικού διαλόγου[146] (Taylor, 2007).

Εκ των ανωτέρω καθίσταται εμφανές ότι η άσκηση Πολιτιστικής Διπλωματίας, ως εννοιολογική υποκατηγορία της άσκησης Δημόσιας Διπλωματίας, αποτελεί κατ΄ ουσίαν προϊόν της διεθνοποιημένης διάδρασης σειράς εθνικών παραγόντων, τόσο επισήμων όσο και ανεπισήμων, οι οποίοι βάσει των ξεχωριστών εθνικών τους επιδιώξεων επιδεικνύουν και αντίστοιχη δραστηριότητα στο επίπεδο του διαπολιτισμικού διαλόγου αλλά και των αντίστοιχων διαπραγματεύσεων (ενδεικτικά Leonard, 2002, Gregory 2005, Szondi 2008) . Ως εκ τούτου, η Πολιτιστική Διπλωματία, όπως παρατηρήθηκε στην αρχή προηγούμενης ενότητας[147], εκτός της *εργαλειακής* της διάστασης ως μέσο άσκησης εξωτερικής πολιτικής, παρουσιάζει και μία *συστημική* διάσταση[148], στην οποία εγγράφεται το πλέγμα των σχέσεων μεταξύ των φορέων άσκησής της σε διεθνές επίπεδο (ενδεικτικά Holden et al.2007).

Το εν λόγω σύστημα, περιλαμβάνει: τους βασικούς συμμετέχοντες-δρώντες, τις μεταξύ τους αλληλεξαρτήσεις και διαδράσεις καθώς και τις σιωπηρές υποθέσεις και τους περιορισμούς που διέπουν τις διαδράσεις αυτές.

Δρώντες: Ένα σύστημα άσκησης Πολιτιστικής Διπλωματίας περιλαμβάνει εκτενές εύρος δρώντων, οι οποίοι, για τις ανάγκες της παρούσας μελέτης, θα μπορούσαν

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[146] Ο Taylor προχωρά ακόμα περισσότερο προς αυτή την κατεύθυνση, διερευνώντας πλέον την συνάρτηση της άσκησης Πολιτιστικής Διπλωματίας, με φαινόμενα πολιτιστικού ιμπεριαλισμού, κατά το παράδειγμα του Geusau, ο οποίος, περισσότερο από μία δεκαετία νωρίτερα, εξέφρασε την άποψη ότι η πολιτιστική ισχύς ενός κράτους θα μπορούσε να εξισορροπήσει την πολιτική του αδυναμία στη διεθνή σκακιέρα (Geusau von A., 1995).

[147] Βλ. ενότητα 1.1. του παρόντος.

[148] Προκειμένου για την αποτύπωση της δεύτερης διάστασης της άσκησης Πολιτιστικής Διπλωματίας, στην παρούσα ενότητα θα χρησιμοποιηθεί σε σημαντικό βαθμό το θεωρητικό υπόβαθρο της Θεωρίας Συστημάτων. Η κατανόηση του εσωτερικού μηχανισμού λειτουργίας του Συστήματος σε οργανωσιακό επίπεδο, αποτελεί και τη βάση για τη διατύπωση προτάσεων άσκησης εξωτερικής πολιτικής μέσω της άσκησης Πολιτιστικής Διπλωματίας, κατά τρόπο ώστε να επιτυγχάνονται απτά αποτελέσματα.

να κατηγοριοποιηθούν ως εξής[149]:

Α. *Επίσημοι* εθνικοί και διεθνείς φορείς άσκησης Πολιτιστικής Διπλωματίας:

- Πολιτικοί και κυβερνητικοί παράγοντες. Εθνικά Κοινοβούλια.
- Ευρωπαϊκή Ένωση και λοιπές ανά τον κόσμο περιφερειακές ενώσεις.
- Διεθνείς Οργανισμοί.

Β. *Ανεπίσημοι* εθνικοί και διεθνείς φορείς άσκησης Πολιτιστικής Διπλωματίας:

- Διασπορά
- Μη Κυβερνητικές Οργανώσεις διεθνούς δραστηριοποίησης.
- Μέσα Μαζικής Ενημέρωσης
- Κοινωνία Πολιτών
- Ιδιωτικός τομέας.

Διάδραση:

Τα αποτελέσματα της άσκησης Πολιτιστικής Διπλωματίας από μία χώρα είναι προϊόν μιας διαδικασίας διαρκούς διαπραγμάτευσης και συναίνεσης μεταξύ των ανωτέρω δρώντων σε διεθνές επίπεδο. Αυτή η διαδικασία, πραγματοποιείται υπό το πρίσμα των εθνικών συμφερόντων εκάστου δρώντος, καθοριζόμενη δυναμικά από τους διαρκώς αναπροσδιοριζόμενους όρους ισχύος[150] μεταξύ των εμπλεκομένων μερών .

Το 2002, σε ένα άρθρο του στο περιοδικό Foreign Policy, ο Mark Leonard διατύπωσε μία ιεραρχία τεσσάρων επιδιώξεων[151] για την άσκηση Δημόσιας Διπλωματίας τον 21ο αιώνα (Leonard et al. 2002):

- ✓ Προώθηση της *εξοικείωσης* των ξένων με τη χώρα (γνωριμία με το θετικό

[149] Για την παρούσα ενότητα έχει αντληθεί υλικό από τις εξής (ενδεικτικές) βιβλιογραφικές πηγές:
-Κωστακης, Μ. (2008) *Ελληνική Πολιτιστική Εξωτερική Πολιτική*. εκδ. ΟΞΥ
-Τζουμάκα, Ε. (2005) *Πολιτιστική Διπλωματία*. εκδ. Σιδέρης
-Χριστογιάννης, Ι. (2006) Ελληνική Πολιτιστική Διπλωματία. εκδ. Έλλην

[150] Βλ. Θεωρία Κυκλωμάτων Ισχύος (Power Circuits). Ενδεικτικά, Clegg, S.R. (1989), '*Frameworks of Power*', London: Sage

[151] Οι τέσσερεις επιδιώξεις όπως ακριβώς αναφέρονται στο εν λόγω άρθρο είναι οι εξής:

- ✓ Increasing familiarity
- ✓ Increasing appreciation
- ✓ Engaging people
- ✓ Influencing people's behavior

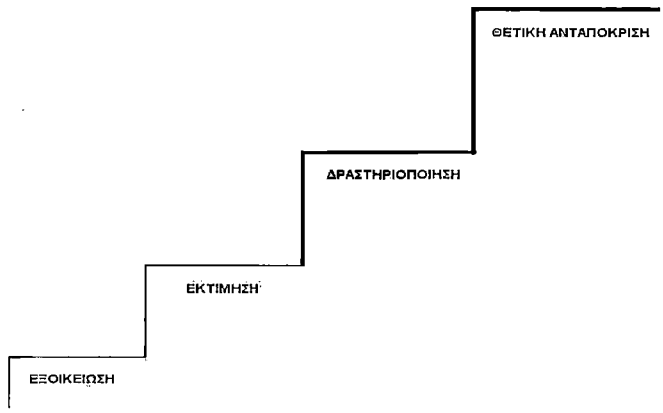
προφίλ της χώρας, αποβολή αρνητικών συνειρμών κλπ.).

- ✓ Προώθηση της *εκτίμησης* των ιδιαιτέρων παραμέτρων της χώρας (προβολή των ιδιαιτέρων διαστάσεων των θεμάτων εξωτερικής πολιτικής της χώρας στους ξένους εταίρους, κατά τρόπο ώστε να επιτυγχάνεται κοινή οπτική).

- ✓ Ενθάρρυνση της *δραστηριοποίησης* των ξένων πολιτών στη χώρα (σύσφιγξη δεσμών σε τομείς *ήπιας πολιτικής* όπως ο τουρισμός, η εκπαίδευση, η τεχνολογική συνεργασία και οι πολιτιστικές ανταλλαγές με στόχο την μεθοδική προβολή των αξιών και των πολιτιστικών παραμέτρων της χώρας στο εξωτερικό αλλά και την προώθηση της οικονομικής και εμπορικής συνεργασίας).

- ✓ Επηρεασμός της διεθνούς *συμπεριφοράς (καλλιέργεια, προετοιμασία και δρομολόγηση θετικών ανταποκρίσεων της διεθνούς κοινότητας σε ζητήματα εξωτερικής πολιτικής της εν λόγω χώρας ).*

Σχηματικά, τα ανωτέρω θα μπορούσαν να παρασταθούν ως εξής:




Σχήμα 1: Οι τέσσερεις βασικές επιδιώξεις άσκησης Δημόσιας Διπλωματίας.
Πηγή: Leonard, M. et al. (2002) "Public Diplomacy", *The Foreign Policy Center*, UK

Δεδομένου ότι η Πολιτιστική Διπλωματία αποτελεί ουσιαστικά έκφανση της Δημόσιας Διπλωματίας, η στρατηγική για την ευόδωση κάθε μίας εκ των ανωτέρω επιδιώξεων, υλοποιείται επί τη βάσει της διαπολιτιστικής διάδρασης, αλλά μέσω

των διαύλων και υπό το πρίσμα και τη μεθοδολογία μιας επιτυχώς στοχευμένης επικοινωνιακής πολιτικής. Επιπλέον, κάθε δράση στο πλαίσιο άσκησης Πολιτιστικής Διπλωματίας δημιουργεί οριζόντιες και κάθετες διασυνδέσεις[152] (*linkages*) μεταξύ των εμπλεκομένων φορέων, οι οποίες θέτουν τις βάσεις για περαιτέρω μελλοντική συνεργασία.

Για το σκοπό αυτό, ο σχεδιασμός εκάστου σταδίου της διαδικασίας θα πρέπει να είναι μακροχρόνιος, έτσι ώστε να λαμβάνει υπ΄ όψιν και τα επιθυμητά αποτελέσματα της στρατηγικής σε επόμενα στάδια. Η Γαλλία, η Τουρκία, οι ΗΠΑ, η Μεγάλη Βρετανία και η Κίνα αποτελούν μερικά μόνο παραδείγματα χωρών που εφαρμόζουν αυτή την τακτική σε βάθος δεκαετιών, έχοντας εντάξει στον πολιτικό τους σχεδιασμό όσον αφορά στην άσκηση εξωτερικής πολιτικής, όχι μόνο τη συλλογιστική της *συνέχειας*, αλλά και τη συλλογιστική της εντεινόμενης με το χρόνο *διεκδίκησης* της θετικής ανταπόκρισης της διεθνούς κοινότητας στα ζητήματα που τις αφορούν, χρησιμοποιώντας εκτός των τυπικών οδών, κάθε άλλο μέσο (ΜΜΕ, δημιουργικές βιομηχανίες, ακόμα και θρησκευτικούς παράγοντες) που θα μπορούσε να φέρει τις ξένες χώρες πιο κοντά στον δικό τους τρόπο σκέψης και πράξης[153].

Στις ενότητες που προηγήθηκαν παρουσιάσθηκε εν συντομία το πλαίσιο της επιχειρηματολογίας υπέρ της αξιοποίησης της δύναμης της Πολιτιστικής Διπλωματίας προς επίτευξη συγκεκριμένων στόχων εξωτερικής πολιτικής στην περίπτωση της Κύπρου. Απομένει να αναλυθεί το πώς θα μπορούσε να επιδιωχθεί κάτι τέτοιο.

Η ιδέα είναι απλή: Σχεδόν τέσσερεις δεκαετίες μετά την παράνομη τουρκική εισβολή και κατοχή, η υλοποίηση της εγκληματικής στρατηγικής της Τουρκίας στην Κύπρο συνεχίζεται ανενόχλητα. Από τη στιγμή που η ύπαρξη αυτής της εγκληματικής στρατηγικής αποδεικνύεται αδιάσειστα από τις καταστροφές και τις συνεχιζόμενες παραβιάσεις των ανθρωπίνων δικαιωμάτων και αναγνωρίζεται

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[152] Στη βιβλιογραφία απαντώνται συχνά οι όροι διασυνδέσεις εμπρόσθεν και όπισθεν (forward-backward linkages), οι οποίοι αναφέρονται στις αντίστοιχες ροές αποτελεσμάτων από και προς συγκεκριμένο σημείο ορισμένης διαδικασίας.

[153] Η βιβλιογραφία βρίθει αναλύσεων επί της μεθοδολογίας άσκησης ευφυούς και μακροπρόθεσμης εξωτερικής πολιτικής, παράθεση των οποίων ξεφεύγει από τους σκοπούς του παρόντος. Ενδεικτικά επισημαίνεται το άρθρο του Mark Leonard στο περιοδικό Foreign Policy, με τίτλο "Diplomacy by other means", 2002, καθώς και η παρουσίαση του Michael McClellan στη Διπλωματική Ακαδημία της Βιέννης τον Οκτώβριο του 2004. Στην παρουσίαση αυτή ο McClellan ανέλυσε το δικό του μοντέλο επικοινωνιακής προσέγγισης μέσω της άσκησης Δημόσιας Διπλωματίας, τη λεγόμενη "Επικοινωνιακή Πυραμίδα των Δημοσίων Σχέσεων", η οποία έχει ως βάση την αφύπνιση (awareness) του στοχευόμενου ακροατηρίου ως προς τα επιθυμητά μηνύματα ενός κράτους και ως κορυφή την ανάληψη δράσης (action) από τα άλλα κράτη, πλέον σε επίπεδο διακυβερνητικό, μέσω της παροχής υποστήριξης εντός διεθνών οργανισμών, της στρατιωτικής συνεργασίας, της υπογραφής διεθνών κειμένων κλπ.

διεθνώς, ίσως έφθασε η ώρα να προβληθούν αυτές οι πτυχές προς πάσα κατεύθυνση, με κάθε δυνατό μέσο, όπως αρμόζει.

# ΚΕΦΑΛΑΙΟ 2ον
# Η Πολιτιστική Διπλωματία στην υπηρεσία του Κυπριακού.

*"Ο στιγματισμός της Τουρκίας ως διεθνώς παρανομούσας χώρας που κατέχει ευρωπαϊκό έδαφος θα ενίσχυε τη διαπραγματευτική θέση της Λευκωσίας αλλά και των Αθηνών έναντι της Άγκυρας."*[154] (Γιαλλουρίδης, Χ. 2009)

Το Κυπριακό ζήτημα, σε αντίθεση με όσα τίθενται επί τάπητος κατά τη διάρκεια των διαπραγματεύσεων επίλυσής του, δεν αποτελεί απλά ένα ακόμη σύνθετο πολιτικό ζήτημα. Όσα συνέβησαν το 1974 στην Κύπρο, περιοχή κομβικής γεωπολιτικής σημασίας όχι μόνο για την Τουρκία αλλά και για σειρά ξένων δυνάμεων (ενδεικτικά, Γιαλλουρίδης Χ., Τσάκωνας Π. 1993), ήταν η αποκορύφωση μεθοδεύσεων και στρατηγικής (O'Malley & Craig, 1999, Βενιζέλος Κ. Ιγνατίου Μ. 2002) η οποία είχε τεθεί σε εφαρμογή από πολύ νωρίτερα[155] και της οποίας συνέχεια και απόδειξη αποτελούν οι εγκληματικές τουρκικές πρακτικές που λαμβάνουν χώρα μέχρι σήμερα στο πολύπαθο αυτό νησί.

Οι πρακτικές αυτές ενέχουν διττό χαρακτήρα: Συστηματική καταστροφή της πολιτιστικής κληρονομιάς –και άρα της *μνήμης* (ενδεικτικά Bevan 2005, Civallero2007, Taylor, 2008)- και κατάφορη παραβίαση των ανθρωπίνων δικαιωμάτων. Οι δύο διαστάσεις από κοινού σηματοδοτούν και συνθέτουν το πλαίσιο άσκησης της Τουρκικής εξωτερικής πολιτικής στην Κύπρο[156], μιας εξωτερικής πολιτικής με βάθος, συνέπεια και συνέχεια που μέχρι στιγμής έχει προβεί σε ελάχιστες παραχωρήσεις (ενδεικτικά Γιαλλουρίδης, Χ. 2001).

Προκειμένου να διατυπωθούν υλοποιήσιμες προτάσεις άσκησης πολιτιστικής διπλωματίας στην περίπτωση της Κύπρου, οι οποίες θα δύνανται να επιφέρουν απτά αποτελέσματα, αξίζει να αποτυπωθούν αρχικώς οι αδυναμίες της

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[154] Από άρθρο του καθηγητή Χριστόδουλου Γιαλλουρίδη στην εφημερίδα ΤΟ ΠΑΡΟΝ, 12.07.2009 http://www.paron.gr/v3/new.php?id=43233&colid=&catid=48&dt=2009-07-12%200:0:0

[155] Η παρουσίαση των ιστορικών γεγονότων που οδήγησαν στην Τουρκική εισβολή και κατοχή στην Κύπρο το 1974, καθώς και στην εισβολή καθεαυτή, υπερβαίνει τους στόχους του παρόντος.

[156] Στο πολύ ενδιαφέρον άρθρο τους οι Jon Calame and Esther Charlesworth, με τίτλο "The divided City as Broken Artifact" (2002) υποστηρίζουν ότι η καταστροφή πολιτιστικής κληρονομιάς από κατοχικές δυνάμεις δεν αποτελεί τυχαίο γεγονός που εντάσσεται στις συνθήκες διάπραξης εγκλημάτων κατά τη διάρκεια ενόπλων συρράξεων, αλλά προϊόν στοχευμένου πολιτικού προγραμματισμού, στου οποίου το επίκεντρο διαφαίνονται ιστορικά συνεχείς πολιτικές αξίες και προτεραιότητες, των οποίων η εμπέδωση υποστηρίζεται, μεταξύ άλλων, και μέσω των εν λόγω βίαιων πρακτικών.

υφιστάμενης στρατηγικής άσκησης παραδοσιακής διπλωματίας, οι οποίες θα πρέπει να αντιμετωπισθούν. Ο Mark Leonard κατηγοριοποίησε αυτά τα σφάλματα τακτικής των κυβερνήσεων ως εξής (Leonard, 2002):

- Οι κυβερνήσεις δεν δίνουν προσοχή στον τρόπο με τον οποίο μεταδίδονται πληροφορίες για τη χώρα τους[157]:

Το ζήτημα δεν είναι να εστιάσει κανείς στην πληροφόρηση που παρέχουν οι Πρεσβείες μιας χώρας στο εξωτερικό, αλλά στην πληροφόρηση την οποία μεταδίδουν οι ξένοι ανταποκριτές που βρίσκονται εντός της χώρας και, ως εκ τούτου, απολαμβάνουν υψηλότερης αξιοπιστίας στην κοινή γνώμη των χωρών τους, ως «αυτόπτες μάρτυρες» των τεκταινομένων.

Στην περίπτωση της Κύπρου, παρ' όλο που οι μαρτυρίες ξένων ανταποκριτών είναι αρκετές, δεν εμφανίζονται με τη συχνότητα που θα έπρεπε

- Οι δυτικές κυβερνήσεις ανταγωνίζονται μεταξύ τους σε 200 διαφορετικές ξένες χώρες, τη στιγμή που έχουν διμερή συμφέροντα σε πολύ μικρό ποσοστό εξ αυτών:

Κάτι τέτοιο έχει ως αποτέλεσμα την σπατάλη πόρων σε επικοινωνιακές στρατηγικές δίχως αντικειμενικό σκοπό[158] (Sartori, 2002), οι οποίες εν τέλει συμβάλλουν ελαχίστως στην επίτευξη των συγκεκριμένων στόχων εξωτερικής πολιτικής μιας χώρας. Θα πρέπει να υπάρχει στόχευση, έτσι ώστε τα μηνύματα μιας κυβέρνησης να κατευθύνονται προς εκείνες τις πλευρές που αμέσως ή εμμέσως θα μπορούσαν να συνδράμουν τις προσπάθειές της.

Στην περίπτωση της Κύπρου και υπό το φως των τελευταίων γεγονότων, φαίνεται πως οι σωστοί χειρισμοί έχουν αντίκρισμα. Απόδειξη η υποστήριξη που λαμβάνει αυτή τη στιγμή η Κύπρος από ΗΠΑ, Ρωσία και Ισραήλ.

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[157] Βλ. συμπληρωματικά την πολύ ενδιαφέρουσα επιχειρηματολογία του Bruce Gregory, σχετικά με τα "φίλτρα" (firewalls) που υφίσταται η πληροφορία για μια χώρα που μεταδίδεται προς τα έξω μέσω των διαφόρων κρατικών και μη διαύλων. (Gregory, 2005)

[158] Βλ. συγκεκριμένα ανάλυση της Anne Sartori ως προς τη σχέση κόστους-αποτελέσματος διαφόρων τύπων επικοινωνιακών σημάτων κατά την άσκηση εξωτερικής πολιτικής μέσω της διπλωματικής διάδρασης. (Sartori, 2002)

➢ Οι κυβερνήσεις δεν υιοθετούν αποτελεσματικές τακτικές άσκησης Δημόσιας Διπλωματίας[159]:

Η ευφυής άσκηση Δημόσιας Διπλωματίας εστιάζει στην δημιουργία, συντήρηση και ανατροφοδότηση *μακροχρόνιων* δεσμών κατανόησης και συνεργασίας μεταξύ των κρατών, έτσι ώστε, εάν χρειασθεί, να ευνοείται ένα κλίμα συμμαχιών σε επίπεδο διεθνών διαπραγματεύσεων. Κάτι τέτοιο, όπως θα δούμε, δεν υλοποιείται εφάπαξ μέσω μονομερούς διάχυσης πληροφοριών από την πλευρά ενός κράτους, αλλά καλλιεργείται σε βάθος χρόνου μέσω της διμερούς και πολυμερούς διάδρασης μη κρατικών/τυπικών φορέων μεταξύ των χωρών (ενδεικτικά Rose & Wadham, 1994, Szondi, 2008). Αυτό είναι και το στοιχείο που διαφοροποιεί την άσκηση δημόσιας διπλωματίας από το *lobbying* (McClellan, 2004).

Με εξαίρεση την Εκκλησία της Κύπρου, της οποίας οι προσπάθειες προβολής της τραγωδίας σε όλες της τις διαστάσεις και προώθησης των εθνικών συμφερόντων της Κυπριακής Δημοκρατίας είναι άξιες επαίνου, η κυπριακή κοινωνία των πολιτών, ιδίως η ακαδημαϊκή κοινότητα, θα μπορούσε να είναι περισσότερο εξωστρεφής σε διεθνές επίπεδο, ιδίως δε με αφορμή την κάθε κατηγορία τουρκικών παραβιάσεων: Και άλλες χώρες έχουν υποφέρει από το μένος των κατακτητών, και άλλες χώρες είναι ευαίσθητες στο ζήτημα των παράνομων εκσκαφών και της αρχαιοκαπηλίας, και σε άλλες χώρες η προστασία της πολιτιστικής κληρονομιάς αποτελεί προτεραιότητα.

➢ Οι κυβερνήσεις δεν αντιλαμβάνονται ότι πλέον οι επίσημοι συνομιλητές δεν πείθουν[160]:

Όπως παρατηρεί ο Melissen, μικροί και μεγάλοι μη κυβερνητικοί δρώντες, όπως οι Μη Κυβερνητικές Οργανώσεις[161] και εκπρόσωποι της διασποράς, μέσω της διεθνικής τους δραστηριότητας, αναπτύσσουν τις δικές τους

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[159] Όπως υποστηρίζει χαρακτηριστικά ο Szondi, *"Nation Branding and Public Diplomacy are the same concepts"*.

[160] Για το ρόλο των μη κρατικών διαύλων άσκησης διπλωματίας, βλ. χαρακτηριστικό άρθρο του Eytan Gilboa (2001) "Diplomacy in the Media Age: Three models of uses and effect" *Diplomacy and Statecraft*, Vol. 2

[161] Από τις πιο γνωστές Μη Κυβερνητικές Οργανώσεις στην Κύπρο είναι: ΚΙΣΑ, ΚΕΝΘΕΑ, EUROPA DONNA Κύπρου, Κυπριακός Ερυθρός Σταυρός, Μικροί Εθελοντές, ΟΠΕΚ, INDEX, Μεσογειακό Κέντρο Ερευνών Κοινωνικού Φύλου, Πρόσκοποι, Όμιλος Ιστορικού Διαλόγου, Terra Cypria, Μουσείο Μονής Κύκκου.

στρατηγικές δημόσιας διπλωματίας, οι οποίες, εκτός του ότι στην πράξη αποδεικνύονται ιδιαιτέρως αποτελεσματικές ως προς την επιρροή της ξένης κοινής γνώμης, η δράση τους αξιοποιείται κατά ολοένα αυξανόμενο βαθμό από τα Υπουργεία Εξωτερικών, ως άτυπος δίαυλος άσκησης εξωτερικής πολιτικής[162] (Melissen, 2005).

Ειδικότερα ως προς τις ΜΚΟ, στην περίπτωση της Κύπρου, η δράση τους για την προβολή και προώθηση των θέσεών της διεθνώς εμφανίζει σημαντικά περιθώρια εντατικοποίησης. Διακόσιες πενήντα Ελληνο-Κυπριακές ΜΚΟ και άλλες τόσες περίπου Τουρκο-Κυπριακές, οι οποίες συνεργάζονται μεταξύ τους αλλά και συναγωνίζονται για την εξασφάλιση πόρων από Διεθνείς Οργανισμούς, θα μπορούσαν να συνδράμουν με το δικό τους τρόπο τις προσπάθειες της Κυπριακής Δημοκρατίας να ακουστεί διεθνώς.

- Οι κυβερνήσεις δεν επενδύουν στην δυναμική διατήρηση της θετικής τους εικόνας προς τα έξω, αλλά τη θεωρούν ως έναν βαθμό, δεδομένη.

Όπως αποδεικνύεται στην πράξη, μέχρι σήμερα, στην περίπτωση της Κύπρου, τα γεγονότα από μόνα τους δεν επαρκούν. Η υποστήριξη της διεθνούς κοινότητας προς την Κύπρο δεν θεωρείται αυτονόητη, αλλά χρειάζεται να καλλιεργείται διαρκώς, τροφοδοτούμενη από μία αδιάλειπτη παροχή πληροφόρησης επί των τεκταινομένων και επί των κυπριακών θέσεων, κατά το παράδειγμα –ειρωνικώς- της Τουρκικής επικοινωνιακής στρατηγικής.

- Οι κυβερνήσεις δεν αντιλαμβάνονται ότι η δημόσια διπλωματία μιας χώρας θα πρέπει να κατευθύνεται προς τα εκεί όπου εντοπίζεται μεγαλύτερο συμφέρον, όχι προς τις χώρες που επηρεάζονται πιο εύκολα.

Όπως παρατηρεί πολύ σοφά ο Joseph Nye, η διάκριση μεταξύ της ισχύος επί συγκεκριμένων χωρών και της ισχύος επί συγκεκριμένων αποτελεσμάτων, είναι σαφής (Nye, 1990): το ότι μία χώρα είναι σε θέση να επηρεάσει σειρά άλλων χωρών, δεν σημαίνει απαραίτητα ότι έχει και τον έλεγχο όλου του συστήματος. Ως εκ τούτου, η άσκηση Δημόσιας Διπλωματίας και κατ΄ επέκταση Πολιτιστικής

[162] Στο ίδιο πνεύμα, αλλά με διαφορετική χροιά, ο Nye παρατηρεί ότι *"δεν έχει σημασία εάν οι κρατικοί ή μη κρατικοί δρώντες είναι πιο σημαντικοί-συνήθως οι κρατικοί υπερισχύουν. Σημασία έχει ότι στην εποχή μας, τα αποτελέσματα εξαρτώνται από πολύ πιο σύνθετες συμμαχίες"* (Nye, 1990)

Διπλωματίας, θα πρέπει να υλοποιείται βάσει ποιοτικών κριτηρίων και όχι ποσοτικών.

Στην περίπτωση του Κυπριακού προβλήματος, έχει αρχίσει να καθίσταται σαφές για την Τουρκία ότι, όντως, δεν είναι σε θέση να επηρεάσει όλο το διεθνές σύστημα προς όφελός της. Αυτή είναι και μια στρατηγική ευκαιρία για την εξωτερική πολιτική της Κύπρου.

- Οι κυβερνήσεις δεν αντιλαμβάνονται το ρόλο του *πολιτισμού* στην επίτευξη των στόχων εξωτερικής πολιτικής τους (Channick, 2005).

Μέσω της πολιτιστικής διάδρασης, ήτοι μέσω της ανταλλαγής ιδεών, πληροφοριών και τέχνης, αφενός μεν διαδίδεται εμμέσως ταχύτατα και εν πολλοίς κεκαλυμμένως πληθώρα στοχευμένων μηνυμάτων που αφορούν σε μία χώρα, αλλά, ταυτόχρονα, καλλιεργείται αμοιβαία κατανόηση μεταξύ των χωρών που εντοπίζουν σε αυτή την διάδραση κοινά σημεία αναφοράς και παρεμφερείς στόχους εξωτερικής πολιτικής[163] (Cummings, M.C., 2003).

Οι ανωτέρω αδυναμίες, καταδεικνύουν έναν συνήθη λανθασμένο προσανατολισμό των κυβερνήσεων ως προς την διαχείριση της δημόσιας εικόνας της χώρας τους στο εξωτερικό και, κατ' επέκταση, των διαστάσεων εξωτερικής πολιτικής που επιθυμούν να προωθήσουν. Ως εκ τούτου, ο Leonard προτείνει την υιοθέτηση ενός νέου τύπου πολυμερούς δημόσιας διπλωματίας, η οποία θα έχει στον πυρήνα της *προληπτικές* επικοινωνιακές στρατηγικές και θα ασκείται από κοινού από τους κρατικούς και μη κρατικούς φορείς εξωτερικής πολιτικής, παράλληλα και συμπληρωματικά.

Από την ανάλυση που προηγήθηκε και τα πρόσφατα, ενδεικτικά παραδείγματα της γενικώτερης τουρκικής στάσης στο Κυπριακό ζήτημα, καθίσταται σαφές ότι τα συμβατικά μέσα αντιμετώπισης της κατάστασης δεν επαρκούν. Από τη στιγμή που η Τουρκία αγνοεί επιδεικτικά το Διεθνές Δίκαιο, καταπατώντας ακόμα και Συμβάσεις τις οποίες έχει επικυρώσει στο παρελθόν (βλ. προηγούμενη ενότητα) και επικαλούμενη τη Διεθνή νομολογία όταν και όποτε

[163] Όπως επισημαίνει ο Cummings, "*Cultural Diplomacy is the linchpin of Public Diplomacy; for it is in its cultural activities that a nation's idea of itself is best represented.*"

κρίνεται συμφέρον[164] δεν θα μπορούσε να θεωρηθεί πλεονάζουσα η αναζήτηση μιας άλλης επικοινωνιακής στρατηγικής, ενός νέου τρόπου άσκησης Δημόσιας Διπλωματίας από την πλευρά της Κύπρου, η οποία, αφενός μεν να προβάλλει τις διεκδικήσεις της, αφετέρου, να ισχυροποιεί τη θέση της σε επίπεδο διεθνών διαπραγματεύσεων.

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*"Είχαμε κάθε ηθικό, νομικό, πολιτικό και ιστορικό έρεισμα να αρνηθούμε να παρακαθίσουμε σε συνομιλίες με την τουρκοκυπριακή ηγεσία για το συνταγματικό πρόβλημα της Κυπριακής Δημοκρατίας, πριν από την άρση της διεθνούς παρανομίας, πριν από την αποχώρηση των τουρκικών κατοχικών δυνάμεων εισβολής."* (Ιακωβίδης, Ν. Π. 2009)

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Δύο μόλις ημέρες προτού ξεκινήσουν οι έρευνες για φυσικό αέριο στην Αποκλειστική Οικονομική Ζώνη της Κυπριακής Δημοκρατίας, ο Τούρκος ΥΠΕΞ Αχμέτ Νταβούτογλου τις χαρακτηρίζε ως "*πρόκληση*", στην οποία η Τουρκία θα απαντήσει εκκινώντας αντίστοιχες έρευνες με τη συμμετοχή του ψευδοκράτους[165].

Για μία ακόμη φορά, η Τουρκία αγνοεί επιδεικτικά το Διεθνές Δίκαιο, το οποίο όμως επικαλείται προκλητικά για να υποστηρίξει τη θέση της. Τακτική γνώριμη και συνήθης, η οποία όμως, για να εξακολουθεί να εφαρμόζεται, σημαίνει πως έχει αποτέλεσμα. Και η ιστορία αποδεικνύει πως όντως, η τακτική αυτή έχει αποτέλεσμα (ενδεικτικά Coufoudakis 2008, Ιακωβίδης, 2009, Χατζημιχαήλ 2010), αφού ούτε κυρώσεις υφίστανται, ούτε έχει ανακοπεί η διαδικασία αξιολόγησής της για ένταξη στην Ε.Ε., παρά τον συνεχιζόμενο, απροκάλυπτο εμπαιγμό του Ευρωπαϊκού Κεκτημένου, των αξιών της Ε.Ε. αλλά και επί της ουσίας, του Ευρωπαϊκού Θεσμικού πλαισίου σύμφωνα με το οποίο δεν νοείται χώρα προς ένταξη να μην αναγνωρίζει και να μην σέβεται κάποια από τις χώρες-μέλη της Ε.Ε[166]. Η Τουρκία λοιπόν εξακολουθεί να παρανομεί, σε πολλά επίπεδα. Το

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[164] Εκτός από το ότι η Τουρκία παραπέμπει στο Διεθνές Δίκαιο Θαλάσσης στην επιχειρηματολογία της ως προς την πρόθεση της Κυπριακής Δημοκρατίας να προχωρήσει σε εξόρυξη υδρογονανθράκων, τη στιγμή που η κύρωση της σχετικής Σύμβασης από την ίδια την Τουρκία εκκρεμεί, πολύ χαρακτηριστικό –και κωμικοτραγικό- είναι και το ότι σε περιπτώσεις διεκδίκησης από την Τουρκία κλεμμένων αρχαιολογικών ευρημάτων που βρέθηκαν σε ξένες αγορές, χρησιμοποιείται ως επιχείρημα η επιτυχής για την Κύπρο έκβαση της διεκδίκησης των ψηφιδωτών της Κανακαριάς από τις ΗΠΑ, την κλοπή και εξαγωγή των οποίων συνέδραμαν εξ' αρχής τουρκικοί παράγοντες.

[165] Βλ. σχετικό άρθρο http://www.skai.gr/news/world/article/180472/a-davoutoglou-proklisi-oi-kupriakes-ereunes-sti-mesogeio-/

[166] Υπενθυμίζουμε την παράγραφο 5 της Διακήρυξης της Ευρωπαϊκής Κοινότητας και των Κρατών-Μελών της, της 21ης Σεπτεμβρίου 2005, σύμφωνα με την οποία "*Recognition of all Member States*

ζήτημα είναι πώς αυτή η τακτική, από απλή παρεκκλίνουσα συμπεριφορά, θα γίνει *στίγμα*.

Η απάντηση χρήζει δημιουργικής ολιστικής προσέγγισης: εφόσον τα γεγονότα από μόνα τους δεν επαρκούν για την πρόκληση διεθνούς κατακραυγής, χρειάζεται να προβληθούν περισσότερο, με κάθε διαθέσιμο μέσο πέραν των αμιγώς πολιτικών. Πρέπει να αναζητηθούν τρόποι προβολής της τουρκικής παραβατικότητας, οι οποίοι να τυγχάνουν υψηλότερης διεισδυτικότητας στην ευρωπαϊκή και διεθνή συνείδηση, εργαλεία που να δημιουργούν *συγκινησιακές γέφυρες*, κοινά σημεία αναφοράς -και αποστροφής- μεταξύ των λαών[167] (Huntington, 1993, Henderson, 1998), ώστε να αξιοποιηθεί αποτελεσματικά η ευνοϊκή για την Κύπρο γεωπολιτική συγκυρία που δημιούργησε η ίδια η Τουρκία με τους χειρισμούς της τον τελευταίο χρόνο[168].

Προς αυτή την κατεύθυνση, η στοχευμένη άσκηση Πολιτιστικής Διπλωματίας –στο επίκεντρο της οποία θα βρίσκεται η προβολή των καταστροφών και των παραβιάσεων ανθρωπίνων δικαιωμάτων στην Κύπρο- μπορεί να αποδειχθεί ιδιαιτέρως χρήσιμο εργαλείο εξωτερικής πολιτικής, το οποίο μπορεί να δημιουργήσει νέους κύκλους διαπραγματεύσεων, νέα ερωτηματικά, νέους συμμάχους για την Κύπρο και περισσότερους επικριτές της Τουρκίας (Goertz, 1994[169]). Για το λόγο αυτό, η προβολή των καταστροφών και των λοιπών παραβιάσεων στην Κύπρο δεν θα πρέπει να θεωρείται ή να αντιμετωπίζεται ως αυτοσκοπός, αλλά ως παράμετρος στρατηγικής.

Όπως παρατηρεί ο Mark McDowell στην πολύ ενδιαφέρουσα ανάλυσή του επί της επικοινωνιακής ισχύος μικρών-μεσαίων-μεγάλων κρατών, παρά τους πόρους που μπορεί να διαθέτει μία μεγάλη χώρα, αυτή μπορεί να υστερεί επικοινωνιακά σε σχέση με μία μικρή, καθώς η τελευταία βρίσκεται σε καλύτερη θέση να διαχειριστεί τα μηνύματά της (McDowell, 2008). Κάτι τέτοιο συμβαίνει για

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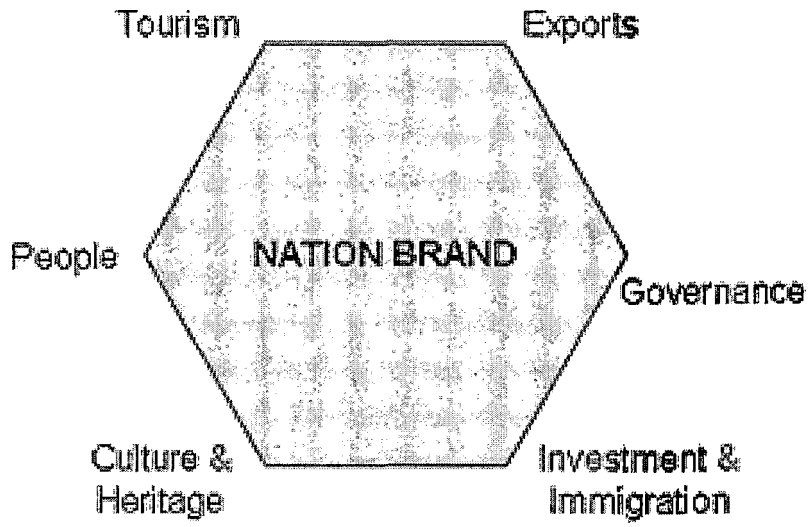
*is a necessary component of the accession process. Accordingly, the EU underlines the importance it attaches to the normalisation of relations between Turkey and all EU Member States, as soon as possible.*" http://www.europa-eu-un.org/articles/en/article_5045_en.htm

[167] Για εκτενή ανάλυση της θεωρίας των Διπλωματικών Διασυνδέσεων (*Diplomatic Linkages*), βλ. ενδεικτικά Russet, B. & Curtis Lamb, W. (1969) "Global Patterns of Diplomatic Exchange". Journal of Peace Research, Vol. 6

[168] Βλ. σχέσεις με Ισραήλ, ΗΠΑ και Ρωσία.

[169] Ως προς το ρόλο του πολιτισμού ως εργαλείο εξωτερικής πολιτικής. Σύμφωνα με τον Goertz, ο πολιτισμός θα μπορούσε να λειτουργήσει ως αιτία, (cause), πηγή νέων νοημάτων (a source of changing meaning) ή ακόμα και εμπόδιο (barrier) στις σχέσεις μεταξύ των κρατών σε διεθνές επίπεδο.




Σχήμα 2: Το εξάγωνο της εθνικής εικόνας
Πηγή: Simon Anholt, 2007

Όπως παρατηρεί ο Anholt, η προβολή των πολιτισμικών παραμέτρων μιας χώρας, ως *οριζόντια πολιτική*, ουσιαστικά ισοδυναμεί με προώθηση της συνολικής της εικόνας προς τα έξω, καθώς κατευθύνει την προσοχή των εξωτερικών παρατηρητών προς εκείνα τα σημεία που ενσωματώνουν τα μηνύματα που επιθυμεί να υπογραμμίσει. Την άποψη αυτή συμπληρώνει ο Wally Olins, υποστηρίζοντας ότι εκτός των καθιερωμένων επίσημων *πολιτικών* διαύλων, οι χώρες προωθούν τα μηνύματα που επιθυμούν μέσω *πολιτιστικών* διαύλων, σε επίπεδο προϊόντων, υπηρεσιών, τέχνης, αρχιτεκτονικής, ακόμα και του αθλητισμού (Olins, 2003).

Πράγματι, τι είναι πιο πειστικό για το ξένο ακροατήριο, τα διεθνή διαβήματα ενός διπλωματικού εκπροσώπου θιγομένου κράτους για τις παραβιάσεις ανθρωπίνων δικαιωμάτων στη χώρα του από τις δυνάμεις κατοχής, ή μία κινηματογραφική ταινία[171] επάνω στο θέμα αυτό (Schneider, 2004); Μία γραπτή διαμαρτυρία στους κόλπους διεθνούς οργανισμού, ή μία έκθεση φωτογραφίας που κάνει το γύρο του κόσμου? Ένα άρθρο εγχώριου δημοσιογράφου σε τοπική εφημερίδα, ή σειρά άρθρων ξένων ανταποκριτών που εισήλθαν στην αποκλεισμένη περιοχή, διεπίστωσαν τα εγκλήματα και έγραψαν για αυτά στα έντυπά τους; "*Τα μεγάλα ακροατήρια ανταποκρίνονται σε συμπεράσματα, όχι σε*

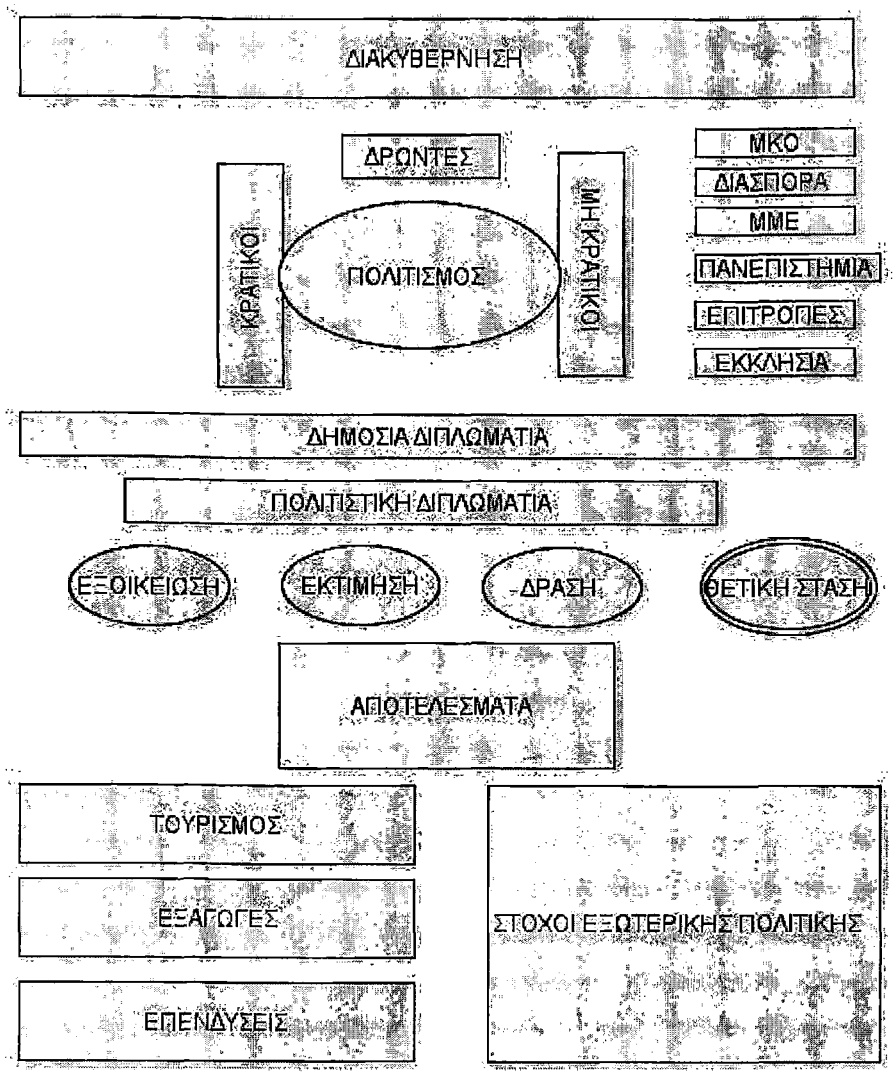
[171] Υπενθυμίζουμε τον αντίκτυπο του βραβευμένου ντοκιμαντέρ του Μιχάλη Κακογιάννη «Αττίλας 1974: Ο βιασμός της Κύπρου».

*αιτιολογήσεις. Σε εικόνες, όχι σε ιδέες. Σε "ατάκες", όχι σε σύνθετα μηνύματα".* (Sproule, 1988)

Αυτή τη στιγμή, υπό το φως των τελευταίων εξελίξεων και της ιδιαιτέρως προκλητικής στάσης της Τουρκίας έναντι της Κύπρου -αλλά και της διεθνούς κοινότητας στο σύνολό της-, αναδύεται μία μοναδική ευκαιρία: να προβληθεί προς πάσα κατεύθυνση όλο το εύρος των τουρκικών παραβιάσεων, κατά τρόπο ενιαίο, συνεκτικό και επικοινωνιακά ευφυή. Η ίδια η Τουρκία με τη στάση της δημιουργεί τις συνθήκες για κάτι τέτοιο και θα ήταν ατόπημα να παραμείνουν αναξιοποίητες.

Οι δυνατότητες επ΄ αυτού είναι πολλές: Το τρίπτυχο Πολιτισμός-Τουρισμός-Επιχειρηματικότητα (κατά το μοντέλο του Anholt) εμπερικλείει πλήθος παραμέτρων που θα μπορούσαν να υποστηρίξουν την *"μετάβαση από την παραδοσιακή άσκηση δημόσιας διπλωματίας, στη διαχείριση σχέσεων"* μέσω της άσκησης πολιτιστικής διπλωματίας (Fitzpatrick, 2007).

Παρ΄ όλο που η διατύπωση συγκεκριμένων προτάσεων υπερβαίνει τους σκοπούς του παρόντος, θα μπορούσαμε, δανειζόμενοι στοιχεία από τα αντίστοιχα θεωρητικά μοντέλα του Anholt (2007) και του Leonard (2002) και συνοψίζοντας όλη την προηγηθείσα ανάλυση, να αποτυπώσουμε τις δυνατότητες αυτές ως εξής:




Σχήμα 3: Ο ρόλος της Πολιτιστικής Διπλωματίας στην επίτευξη στόχων εξωτερικής πολιτικής ενός κράτους.

Υπό τη σκέπη της διακυβέρνησης ενός κράτους, ήτοι της άσκησης εσωτερικής και εξωτερικής πολιτικής, δραστηριοποιούνται δύο κατηγορίες δρώντων: Οι κρατικοί δρώντες ως επίσημοι φορείς της κυβερνητικής πολιτικής και οι μη κρατικοί δρώντες, των οποίων η δράση οριοθετείται και επηρεάζεται σε μεγάλο βαθμό από αυτή την κυβερνητική πολιτική.

Οι μη κρατικοί δρώντες έχουν πρόσβαση σε μη τυπικούς διεθνείς διαύλους επικοινωνίας και ενημέρωσης και, ως εκ τούτου, η διάδραση μεταξύ τους είναι

πολύ πιο ευέλικτη, έχει μεγαλύτερη απήχηση στα διεθνή ακροατήρια και, εν τέλει, αποδεικνύεται πολλές φορές αποτελεσματικότερη της αντίστοιχης διάδρασης σε διακυβερνητικό επίπεδο (ενδεικτικά Malone, 1988, Cull 2003, Melissen, 2005). Για το λόγο αυτό, οι μη κρατικοί δρώντες είναι συνήθως καταλληλότεροι για την άσκηση δημόσιας διπλωματίας. Βασικοί μη κρατικοί φορείς άσκησης δημόσιας διπλωματίας είναι, πέραν των ΜΚΟ, οι οργανώσεις της διασποράς, η ακαδημαϊκή κοινότητα στο σύνολό της, τα ΜΜΕ, οι θεματικές επιτροπές[172] αλλά και η Εκκλησία, με το δίκτυο των τοπικών και ανά τον κόσμο ενοριών της.

Η συνδυασμένη δράση κρατικών και μη κρατικών φορέων κατά την άσκηση δημόσιας διπλωματίας, η οποία ασφαλώς προϋποθέτει προσεκτικό σχεδιασμό, συγκεκριμένη στοχοθεσία και επαρκή συντονισμό, έχει ως αποτέλεσμα την σταδιακή καλλιέργεια μιας θετικής εικόνας της χώρας στο εξωτερικό[173], ιδίως μέσω της προβολής τόσο των συγκριτικών της πλεονεκτημάτων όσο και των γεγονότων που την καθιστούν άξια διεθνούς προσοχής και ανταπόκρισης.

Κάθε κατηγορία δρώντων έχει τις δικές της προσβάσεις και τη δική της απήχηση: οι κρατικοί φορείς σε επίπεδο κυβερνήσεων και διεθνών οργανισμών, οι ΜΚΟ σε επίπεδο Κοινωνίας των Πολιτών, οι οργανώσεις της διασποράς στα ακροατήρια της έδρας τους, η ακαδημαϊκή κοινότητα σε ένα ευρύτατο και δυναμικό διεθνές δίκτυο φοιτητών, επιστημόνων, λογίων, πολιτικών παραγόντων κλπ, τα ΜΜΕ στο σύνολο της κοινωνίας. Στην εποχή μας, οι δυνατότητες μετάδοσης των επιθυμητών μηνυμάτων προς πάσα κατεύθυνση είναι απεριόριστες. Σε επίπεδο άσκησης ευφυούς εξωτερικής πολιτικής, το ζητούμενο είναι να χαρτογραφηθούν αυτές οι δυνατότητες και να αξιοποιηθούν οι αντίστοιχες ευκαιρίες κατάλληλα.

Αυτή η στρατηγική επιφέρει και ποσοτικά και ποιοτικά αποτελέσματα: *ποσοτικά* βάσει της προώθησης της εξωστρέφειας της χώρας σε όρους τουρισμού-επιχειρηματικότητας/εξαγωγών και προσέλκυσης Αμέσων Ξένων Επενδύσεων, η οποία επιτυγχάνεται σταδιακά, με την εξοικείωση των ξένων δυνητικών εταίρων. *Ποιοτικά* μέσω της προώθησης των στόχων εξωτερικής πολιτικής, οι οποίοι πραγματώνονται πλέον και κεκαλυμμένα, στο πλαίσιο της διαχείρισης των διμερών και διεθνών οικονομικών, εμπορικών, μορφωτικών και πολιτιστικών σχέσεων της συγκεκριμένης χώρας με τις υπόλοιπες.

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[172] Π.χ. οι Επιτροπές για την προστασία της πολιτιστικής κληρονομιάς στην Κύπρο.

[173] Βλ. το μοντέλο του Leonard Εξοικείωση-Εκτίμηση-Δραστηριοποίηση-Θετική Ανταπόκριση

Υπό αυτή την έννοια, η άσκηση πολιτιστικής διπλωματίας δεν θα πρέπει να θεωρείται ως μία ακόμα στρατηγική δημοσίων σχέσεων, αλλά ως σημαντική, οριζόντια παράμετρος της κυβερνητικής πολιτικής, αξιοποιήσιμη σε όλους τους τομείς διακυβέρνησης μιας χώρας.

Στην περίπτωση της Κύπρου, δεδομένης της ευνοϊκής συγκυρίας σε όρους συμμαχιών την οποία έχει δημιουργήσει η ίδια η Κύπρος αξιοποιώντας σοφά τη θετική της διάδραση με γείτονες χώρες -οι οποίες επωφελούνται ασφαλώς από τη συνεργασία τους σε περιφερειακό επίπεδο-, υπάρχουν σημαντικά περιθώρια άσκησης αποτελεσματικής Πολιτιστικής Διπλωματίας, η οποία, μέσω αυτών ακριβώς των στρατηγικών συμμαχιών θα μπορούσε να αποκτήσει σημαντικές προοπτικές εμβάθυνσης και εντατικοποίησης σε βάθος χρόνου.

## ΣΥΜΠΕΡΑΣΜΑΤΙΚΕΣ ΠΑΡΑΤΗΡΗΣΕΙΣ

Στην παρούσα εργασία επιχειρήθηκε μία κατά το δυνατό σφαιρική αποτύπωση της πολιτιστικής και ανθρωπιστικής διάστασης της τουρκικής εισβολής στην Κύπρο, η οποία στη συνέχεια αποτέλεσε τον πυρήνα μιας πρότασης άσκησης αποτελεσματικής Πολιτιστικής Διπλωματίας εκ μέρους της Κύπρου, η οποία θα μπορούσε να συμβάλλει σημαντικά στις υφιστάμενες προσπάθειες επίλυσης του Κυπριακού ζητήματος μέσω των τυπικών διαύλων.

Το βασικό επιχείρημα της ανάλυσης που προηγήθηκε ήταν ότι η προβολή των καταστροφών της πολιτιστικής κληρονομιάς στην Κύπρο και των συνεχιζόμενων παραβιάσεων των ανθρωπίνων δικαιωμάτων από τις τουρκικές κατοχικές δυνάμεις, δύο αλληλένδετων συνιστωσών της ίδιας τακτικής εκ μέρους της Τουρκίας, δεν θα πρέπει να θεωρείται ως απλή παράμετρος διαλεκτικής στο πλαίσιο της διεθνούς πολιτιστικής διάδρασης, αλλά ως *εργαλείο πίεσης* σε επίπεδο διαπραγματεύσεων επίλυσης του κυπριακού προβλήματος. Κι αυτό γιατί, στην περίπτωση της Κύπρου, δεν υπάρχει πολυτέλεια για ανταλλαγή φιλοφρονήσεων και συμπάθειας.

Τα τραγικά γεγονότα που λαμβάνουν χώρα στην πολύπαθο Νήσο από το καλοκαίρι του 1974 έως και τις μέρες μας, δεν αφήνουν περιθώρια αμφιβολιών ούτε ως προς την ενοχή της Τουρκίας, ούτε ως προς τις κατευθύνσεις που θα πρέπει να υιοθετεί η λύση του προβλήματος. Εν προκειμένω, λοιπόν, ο ρόλος της πολιτιστικής διπλωματίας είναι ρόλος συμπληρωματικός της παραδοσιακής διπλωματικής δραστηριοποίησης: Δεν πρόκειται για διαφήμιση του κάλλους του κυπριακού τοπίου και των μνημείων του, αλλά για διακήρυξη της εγκληματικής στρατηγικής που υλοποιείται ανεμπόδιστα εις βάρος αυτού του κάλλους και αυτών των μνημείων όλα αυτά τα χρόνια. Δεν πρόκειται για την επιδίωξη κατανόησης και συμπόνιας από πλευράς ξένων χωρών, πρόκειται για την επιδίωξη έμπρακτης συμπαράστασης από τις ξένες χώρες, εν τέλει σε επίπεδο πολιτικό -ευρωπαϊκό και διεθνές-, με την χρήση ήπιων μέσων, όπως ο πολιτιστικός διάλογος.

Σε κάθε περίπτωση πάντως, καθώς διανύουμε μία περίοδο κομβικής σημασίας για την εξέλιξη των διαπραγματεύσεων στο Κυπριακό κάθε τι που θα μπορούσε να βοηθήσει, ακόμα και εμμέσως, όπως η άσκηση στοχευμένης πολιτιστικής διπλωματίας, αποκτά υπό αυτές τις συνθήκες ενισχυμένη βαρύτητα.

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http://cmiskp.echr.coe.int/tkp197/view.asp?item=8&portal=hbkm&action=html&highlight=Cyprus%20|%20v.%20|%20Turkey&sessionid=78235938&skin=hudoc-en

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-1$^{Η}$ 'Εκθεση της Επιτροπής για την κατάσταση στην Κύπρο, για το διάστημα 20.07.1974-18.05.1976 http://www.btinternet.com/~argyros.argyrou/Eurohrc1.htm

-2$^{Η}$ 'Εκθεση της Επιτροπής για την κατάσταση στην Κύπρο, για το διάστημα 19.05.1976-10.02.1983 http://www.btinternet.com/~argyros.argyrou/Eurohrc2.htm

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-Περί Αρχαιοτήτων Νόμος της Κυπριακής Δημοκρατίας
http://www.mcw.gov.cy/mcw/da/da.nsf/DMLlaw_gr/DMLlaw_gr?OpenDocument

# ΠΑΡΑΡΤΗΜΑΤΑ

# ΠΑΡΑΡΤΗΜΑ Ι

Έκθεση της Επιτροπής Ελσίνκι του Αμερικανικού Κογκρέσου για την Καταστροφή της Πολιτιστικής Κληρονομιάς στη Βόρεια Κύπρο και τις Παραβιάσεις του Διεθνούς Δικαίου. [2009]

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# REPORT FOR CONGRESS

**April 2009**

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# Cyprus

# Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law

*This report concerns the international legal framework relevant to the destruction of cultural property in the northern part of Cyprus.*

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# DESTRUCTION OF CULTURAL PROPERTY IN THE NORTHERN PART OF CYPRUS AND VIOLATIONS OF INTERNATIONAL LAW

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## CYPRUS

## DESTRUCTION OF CULTURAL PROPERTY IN THE NORTHERN PART OF CYPRUS AND VIOLATIONS OF INTERNATIONAL LAW

*Executive Summary*

*Due to the military invasion by Turkey in July and August 1974, the Republic of Cyprus has been de facto divided into two separate areas: the southern area under the Government of Cyprus, which is recognized as the only legitimate government; and the northern area, amounting to approximately 36 percent of the territory, under the non-recognized, illegal, and unilaterally declared "Turkish Republic of Northern Cyprus" ("TRNC"). As documented, the northern part of Cyprus has experienced a vast destruction and pillage of religious sites and objects during the armed conflict and continuing occupation. In addition, a large number of religious and archaeological objects have been illegally exported and subsequently sold in art markets. The Republic of Cyprus has asserted its ownership over its religious and archaeological sites located in Cyprus through use of its domestic legislation. The Cyprus government and the Church of Cyprus claim that such religious sites constitute part of Cyprus' cultural property and are of paramount importance to the collective history and memory of the people of Cyprus as a nation, as well as to humankind. In a few instances, Cyprus, either through diplomatic channels or through legal action, has been successful in repatriating religious and archaeological objects.*

*Protection of religious sites and other cultural property during armed conflict and occupation falls within the ambit of international humanitarian law, otherwise known as the law of war. The basic principle is that cultural property must be safeguarded and protected, subject to military necessity only when such property has been converted to a military objective. Pursuant to the major international agreement on this subject, the 1954 Hague Convention for the Protection of Cultural Property During Armed Conflict and its Protocols, as well as the legal regime on occupation, Turkey, as a state party, is required to refrain from acts of hostility and damage against cultural property located in the northern part of Cyprus; to prohibit and prevent theft, pillage, or misappropriation of cultural property; and to establish criminal jurisdiction to prosecute individuals who engage in acts of destruction, desecration, and pillage. Archaeological excavations in the occupied northern part of Cyprus are prohibited unless they are critical to the preservation of cultural property; in such a case, excavations must be carried out with the cooperation of the national competent authorities of the occupied territory. Such violations of conventional and customary international rules on the protection of cultural property may give*

*rise to legal responsibility on the part of Turkey as the occupying power before an international court or tribunal, provided that other requirements are met. A legal precedent for the responsibility of Turkey for actions against cultural property would be the judgments of the European Court of Human Rights. The Court, based on the "effective control" test, used in Loizidou v. Turkey, found Turkey responsible for deprivation of private property of Greek-Cypriots expelled from the occupied northern part of Cyprus.*

*The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Rome Statute of the International Criminal Court (ICC) consider the destruction of cultural property to be a war crime. The ICTY has held individuals accountable for the destruction or damage done to institutions dedicated to religious, artistic, scientific, or historic monuments. Moreover, the ICTY has reaffirmed that the rules on protection of cultural property during armed conflict have achieved the status of customary international law; thus, they are binding erga omnes, against all states, even if a state is not party to an international humanitarian law instrument.*

*Two international Conventions governing protection of cultural property apply to the issue of illicit traffic and exportation of cultural property from the northern part of Cyprus: a) the 1970 UNESCO (United Nations Educational, Scientific, and Cultural Organization) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and b) the 1995 UNIDROIT (International Institute for the Unification of Private Law) Convention on Stolen or Illegally Exported Cultural Objects. A basic objective of both Conventions is to fight the illicit trade in art and cultural property. Under the 1970 Convention, which has been ratified by Cyprus and Turkey, parties are required to take steps to prevent illicit traffic through the adoption of legal and administrative measures and the adoption of an export certificate for any cultural object that is exported. Cyprus has complied with these requirements. In addition, the 1970 Convention regards as "illicit" any export or transfer of ownership of cultural property under compulsion that arises from the occupation of a country by a foreign power. The 1995 UNIDROIT Convention establishes uniform rules for restitution claims by individuals regarding stolen cultural objects and return claims by states regarding illicitly exported cultural objects. While Cyprus has ratified the Convention, Turkey has not.*

*The Cyprus Government stresses that the optimum way to preserve and protect its cultural property is to find a solution to the Cyprus issue and the end of the military occupation of the northern part of Cyprus. Meanwhile, Cyprus may opt, inter alia, to utilize judicial remedies to resolve outstanding disputes pertaining to its cultural and religious property either before foreign courts, as it has already done, or international and regional courts, provided that other criteria are met.*

## I. Introduction

Following the military invasion of Cyprus in 1974 and the continuing occupation of the northern part of Cyprus by Turkey, it has been documented that extensive destruction, desecration, and pillage of religious sites and other historic monuments, as well some disputed archaeological excavations and illegal exportation of objects, have occurred in the northern part of Cyprus. The Government of Cyprus claims that the impetus behind the acts of destruction and desecration of religious sites is the obliteration of their cultural and religious symbols, which form part of the cultural and spiritual heritage of Cyprus; as such they are extremely significant not only for the Greek-Cypriots, but also for the entire population of Cyprus and for humankind in general. On the other hand, the unilaterally declared and unrecognized (with the exception of Turkey) "state" of the "Turkish Republic of Northern Cyprus" ("TRNC") argues that its competent authorities are engaged in actions designed to preserve and protect religious sites, regardless of their origin and, moreover, that the excavations are taking place within the "TRNC's" own "sovereign" area.

It is against this background that this report analyses the international legal framework governing the protection of cultural property in the northern part of Cyprus. The report also examines the rights and obligations of Turkey and Cyprus arising out of international agreements and especially the legal consequences of the destruction and pillage of Cyprus' religious and cultural property by "TRNC."

The analysis focuses on the international legal norms and standards applicable to:

a) The protection of cultural property during armed conflict;

b) Occupied territory;

c) The protection of cultural property against the illicit trade and export of artifacts; and,

d) Religious intolerance.

In order to draw out the issues, the report provides a historical background, continuing to the time of the *de facto* partition of the island and the ensuing military occupation. Also included is a brief description of the reported destruction of cultural property that occurred in the northern part of Cyprus and an overview of Cyprus' domestic ownership laws on cultural property. In analyzing the international legal standards applicable to the protection of cultural property, this report examines three key legal issues:

a) Whether religious sites in Cyprus (including churches, chapels, monasteries, synagogues, and mosques used by the Greek Cypriot community and other minorities for religious purposes) qualify as "cultural property" as defined in the relevant law and thus warrant international protection;

b) Whether the northern part of Cyprus meets the legal definition of an occupied territory; and

c) Whether the destruction of religious sites in the northern part of Cyprus could give rise to international responsibility on the part of the occupying Turkish military forces in Cyprus; the sub-issue of whether "TRNC" bears any degree of responsibility is briefly touched upon as well.

The report concludes with a short overview of courses of action available to the Republic of Cyprus to pursue its legal claims against the destruction, illicit trade, and transfer of its cultural property.

## II. Historical Background

The Republic of Cyprus is a small nation in size and population with a very rich and ancient history and civilization. Archeological findings indicate that Cyprus was inhabited around 7,000 B.C. The island was exposed to Christianity early, with the visit of Apostles Barnabas and Peter. During the Byzantine era, Cyprus was under the administration of Byzantine emperors for approximately 800 years (395-1191 A.D).[1] It was during this time that a great number of churches were built and decorated with mosaics and frescoes of exquisite beauty.[2] In 1571, Cyprus became part of the Ottoman Empire and in 1878 fell under British rule.

After a long period as a British colony,[3] the Republic of Cyprus became an independent nation on August 16, 1960, with the signing of the Treaty of Alliance, Treaty of Guarantee, and the adoption of the Cyprus Constitution.[4] Under the Treaty of Guarantee,[5] the three guarantor powers, Greece, Turkey and the United Kingdom, agreed to safeguard and respect the independence and sovereignty of Cyprus. Cyprus' population is composed of two communities; Greek-Cypriots, and Turkish-Cypriots. The two communities are linguistically and religiously distinct from each other. They had long inhabited the island in peaceful symbiosis, with some sporadic periods of political instability and internal strife. Prior to 1974, the Greek-Cypriot community comprised 80 percent of the population of Cyprus, the Turkish-Cypriots totaling approximately 18 percent, with the balance being comprised of a small percentage of Armenians, Maronites, and Latin.[6]

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[1] KYPROS CHRYSOSTOMIDES, THE REPUBLIC OF CYPRUS: A STUDY IN INTERNATIONAL LAW (2000); *see also* Republic of Cyprus, Press and Information Office, THE ALMANAC OF CYPRUS 16 (1996); Republic of Cyprus, Press and Information Office, WINDOW ON CYPRUS (2005).

[2] CHRYSOSTOMIDES, *supra* note 1.

[3] In 1914, Cyprus was annexed by Great Britain. Between the period of 1925 to 1960 Cyprus had the status of a Crown colony. For an analysis of the history of Cyprus, *see* CHRYSOSTOMIDES, *supra* note 1. *See also*, CRITON G. TORNARITIS, CYPRUS AND ITS CONSTITUTION AND OTHER LEGAL PROBLEMS (1980).

[4] M. ALAMIDES, THE CONSTITUTION OF THE REPUBLIC OF CYPRUS 3 (2004).

[5] Treaty of Guarantee, Aug. 16, 1960, 382 U.N.T.S. 3.

[6] CHRYSOSTOMIDES, *supra* note 1. Appendix E of the 1960 Cyprus Constitution recognizes three religious groups in Cyprus consisting of Armenians, Maronites, and Latins. Latins originated from the Franciscan Order of the Roman Catholic Church and were established in Cyprus during the Ottoman period. Members of these groups are guaranteed human rights and freedoms comparable to those afforded by the European Convention of Human Rights and are also constitutionally protected against discrimination.

Since the 1974 military invasion of Cyprus by Turkey and the ensuing occupation of the northern 37 percent of the island, the Republic of Cyprus has been *de facto* divided into two separate areas, with the southern area under the government of Cyprus, which is recognized as the only legitimate government, and the northern area under the non-recognized, illegal, and unilaterally declared "TRNC." The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established in 1964 after the eruption of intercommunal violence in 1963, and is in control along the so called "green line" to guarantee maintenance of peace and security between the two communities.[7] The military invasion by Turkey was precipitated when the Greek military regime, with the assistance of the Cypriot armed forces, planned and executed a coup d'etat against the government of Archbishop Makarios, the first elected President of the Republic of Cyprus. On July 20, 1974, Turkey, using the coup d'etat as grounds to allegedly protect the Turkish community, intervened militarily in Cyprus in order to "reestablish the constitutional order."[8] A series of unsuccessful peace negotiations ensued between the two communities under the auspices of the United Nations (UN) until August 14, 1974, when Turkey initiated a second military attack on Cyprus and occupied 36.02 percent of the territory of the Republic of Cyprus.[9]

As a result of the 1974 Turkish invasion of Cyprus, almost 200,000 Greek-Cypriots fled their homes in the north and either became refugees or were internally displaced, and eventually settled in the southern part of Cyprus. The Turkish-Cypriots who lived in various parts of the island prior to 1974 moved to the north.[10]

Currently, the population of Cyprus includes approximately 660,000 Greek-Cypriots who live in the south, 89,000 Turkish-Cypriots in the north, and a Turkish military force of approximately 43,000. Moreover, Turkey has brought close to 160,000 Turkish settlers to the northern part of Cyprus from mainland Turkey in an effort to alter the demographics of Cyprus. The European Court of Human Rights of the Council of Europe, to which Turkey and Cyprus are members, in numerous instances has found Turkey to have violated various human rights in the northern part of Cyprus, in particular the rights of individuals to their property, and the right to life, liberty, and security.

The "TRNC" was unilaterally proclaimed in 1983 and adopted a Constitution. The United Nations Security Council, in Resolutions 541 and 550, adopted in 1983 and 1984, respectively, declared the secession invalid, null, and void. The Security Council also urged the

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[7] The role of the UNFICYP was expanded in response to the Turkish military invasions. For information on the UNFICYP, *see* http://www.un.org/Depts/dpko/missions/unficyp/. For an analysis of the efforts of the United Nations to find a workable solution to the Cyprus problem, *see* CLAIRE PALLEY, AN INTERNATIONAL RELATIONS DEBACLE, THE UN SECRETARY-GENERAL'S MISSION OF GOOD OFFICES IN CYPRUS 1999-2004 (2005).

[8] CHRYSOSTOMIDES, *supra* note 1.

[9] CHRYSOSTOMIDES, CYPRUS – THE WAY FORWARD 63 (2006).

[10] *See* Ministry of Foreign Affairs of the Republic of Cyprus, *The Third Vienna Agreement – August 1975* (Aug. 2, 1975) (communiqué issued after the third round of talks on Cyprus held in Vienna from July 31-Aug. 2, 1975), *available at* http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/0658E5B2F4D1A538C22571D30034D15D/$FILE/August%201975.pdf?OpenElement.

international community not to recognize the "TRNC."[11] Thus far, no country (with the exception of Turkey) has recognized the "TRNC" as a separate state under international law. The United Nations, the European Union (EU),[12] the Council of Europe,[13] and others[14] have repeatedly reaffirmed the status of the Republic of Cyprus as the only legitimate government. A number of national and international courts, in adjudicating legal issues that have incidentally raised the question of the status of the "TRNC," have not recognized its legitimacy.[15]

On May 1, 2004, the Republic of Cyprus, as a single state, joined the EU.[16] For the time being, the entire body (*acquis communautaire)* of EU law applies only to the southern part of the

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[11] S.C. Res. 541, U.N. Doc. S/RES/541 (Nov. 18, 1983) and S.C. Res. 550, U.N. Doc. S/RES/541 (May 11, 1984), *available at* http://www.un.org/Docs/sc/unsc_resolutions.html, *reprinted in* RESOLUTIONS ADOPTED BY THE UNITED NATIONS ON THE CYPRUS PROBLEM (Press and Information Office, Ministry of Interior, Republic of Cyprus, 1964-1990).

[12] On November 16, 1983, the European Community adopted a statement rejecting the declaration and expressing its deep concerns regarding the establishment of "TRNC" as an independent state. The statement also reaffirmed its support of the sovereignty, independence, and unity of Cyprus. The European Parliament has held hearings on the issue of destruction of cultural property and, *inter alia*, in 2006 it adopted a Declaration on the Protection and Preservation of the Religious Heritage in the northern part of Cyprus, EUR. PARL. DOC. P6_TA(2006)0335 (Aug. 30, 2006), *available at* http://www.europarl.europa.eu/registre/seance_pleniere/textes_adoptes/definitif/2006/09-05/0335/P6_TA(2006)0335_EN.pdf. The Parliament's Committee of Education and Culture also endorsed funds from the 2007 budget for a study on the situation of religious sites in northern Cyprus. Alexia Saoulli, *European Parliament Backs Funds for Study on Churches in the North,* Museum Security Network Mailing List (Sept. 14, 2006), *available at,* http://msn-list.te.verweg.com/2006-September/005975.html.

[13] In 1983, the Committee of Ministers of the Council of Europe issued a Resolution which, *inter alia*: a) deplored the declaration by the Turkish Cypriot leaders of the "purported independence of the so-called "Turkish Republic of Northern Cyprus"; b) declared the unilateral declaration invalid; and, c) reaffirmed its commitment to the Republic of Cyprus as the only legitimate government. Comm. of Ministers Resolution (83) 13, Nov. 24, 1983, on Cyprus, *available at* http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/C1E21396890CA83CC22571D2001E8A47/$file/Res%2083.pdf?OpenElement.

[14] The Commonwealth Heads of Government, in a meeting convened in New Delhi, India, November 23-29, 1983, condemned the declaration of the "TRNC" "to create a secessionist state in northern Cyprus, in the area under foreign occupation." A press communiqué was issued stating, inter alia, as follows:

> [The] Heads of Government condemned the declaration by the Turkish Cypriot authorities issued on 15 November 1983 to create a secessionist state in northern Cyprus, in the area under foreign occupation. Fully endorsing Security Council Resolution 541, they denounced the declaration as legally invalid and reiterated the call for its non-recognition and immediate withdrawal. They further called upon all States not to facilitate or in any way assist the illegal secessionist entity. They regarded this illegal act as a challenge to the international community and demanded the implementation of the relevant UN Resolutions on Cyprus.

*Quoted in* Loizidou v. Turkey (Merits), Eur. Ct. Hum. H.R., VI Dec. & Rep. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=9256208&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=588&highlight=.

[15] For a review of several cases involving courts in the United States and the United Kingdom, the European Court of Justice, and the European Court of Human Rights, *see* CHRYSOSTOMIDES, *supra* note 1, at 280-315.

[16] *See* Press Release, Cyprus Government, Press and Information Office, EU Accession Treaty–Protocols on Cyprus, *available at* http://www.cyprus.gov.cy/moi/PIO/PIO.nsf/All/DA5EA02B13392A77C2256DC2002B662A?OpenDocument (last visited Mar. 9, 2009).

Republic, which is under the control of the government of Cyprus, since the latter is unable to exercise effective control in the northern part of Cyprus due to occupation.[17]

## III. Destruction of Cultural Property and Illicit Trade of Stolen and Illegally Exported Artifacts

Various documents confirm that during the Turkish military invasion, and especially during the thirty-five years of occupation that have followed, a plethora of archaeological and religious sites have been damaged.[18] The destruction of historic monuments and the desecration of religious sites constitute issues of paramount importance for the people of Cyprus as a nation, because such monuments and religious sites represent and constitute part of Cyprus' vast cultural and religious heritage. The Cyprus government and the Church of Cyprus have campaigned for years to disseminate information before various fora[19] on the destruction of their cultural property, and to repatriate lost or stolen artifacts taken from religious sites in the northern part of Cyprus. The partial lifting of the restrictions of movement between the two communities across the ceasefire line in 2003 heightened the awareness of the Greek-Cypriot community, who witnessed for the first time the magnitude and the extent of the destruction and desecration of religious and other historical monuments.

In 2008, the Parliamentary Assembly of the Council of Europe issued Resolution 1628 on the Situation in Cyprus, in which it urged Turkish and Cypriot authorities, *inter alia*, to protect all religious monuments and permit restoration of such monuments where it is necessary.[20]

The United Nations Educational, Scientific, and Cultural Organization (UNESCO),[21] in implementing its exclusive mandate to protect cultural property, in 1984 provided the first official account of the destruction of cultural property. At that time, UNESCO issued a report on the implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict,[22] noting that the distinctive emblem required by the Convention had been

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[17] *See id.*

[18] For a description of the destruction of cultural property, *see* CHARALAMBOS CHOTZAKOGLOU, RELIGIOUS MONUMENTS IN TURKISH-OCCUPIED CYPRUS: EVIDENCE AND ACTS OF CONTINUOUS DESTRUCTION 28-29 (2008); FLAGELLUM DEI: THE DESTRUCTION OF THE CULTURAL HERITAGE IN THE TURKISH OCCUPIED PART OF CYPRUS (Nicosia, Cyprus: Press and Information Office, 2d ed. 1989); MICHAEL JANSEN, WAR AND CULTURAL HERITAGE: CYPRUS AFTER THE 1974 INVASION (2005).

[19] Including the United Nations Educational, Scientific, and Cultural Organization (UNESCO); the Council of Europe; the European Parliament; the International Council of Museums (ICOM); and others.

[20] Council of Europe Resolution 1628, para. 11.4, Oct. 1, 2008, *available at* http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/ERES1628.htm.

[21] Under the aegis of UNESCO several conventions have been adopted dealing with various aspects of cultural property. In addition, UNESCO has drafted numerous recommendations and declarations, as will be seen in subsequent parts of this report.

[22] In implementation of this Convention, parties are required to forward at least every four years to the Director-General of UNESCO a status report concerning domestic measures towards implementation of the Convention. Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 26, para. 2, May 14, 1954, *entered into force* Aug. 7, 1956, 249 U.N.T.S. 215, *available at* http://portal.unesco.org/en/ev.php-

placed on the roofs and in front of important monuments, archaeological sites, museums and other institutions that are under the control of the government of Cyprus.[23] The report continued:

> Unfortunately, in the area occupied by the Turkish army, museums and monuments have been pillaged or destroyed. The government [of Cyprus] has repeatedly applied to UNESCO and asked the mission of observers to report on the condition of the monuments. So far, this mission has met with the refusal of the Turkish 'authorities.'[24]

The report referred to the area of Paphos, which was subject to aerial bombardment by Turkey in 1974 and was placed on the World Heritage List in 1980.[25] A subsequent UNESCO report adopted in 1989 described the situation in Cyprus in similar terms.[26]

The following data, made available by the Ministry of Foreign Affairs of Cyprus on its website, illustrate the extent of the destruction and pillage of cultural property in the northern part of Cyprus:

- 500 Greek Orthodox churches and chapels have been pillaged, vandalized, or demolished;
- 133 churches, chapels, and monasteries have been desecrated;
- the whereabouts of 15,000 paintings are unknown; and
- 77 churches have been turned into mosques, 28 are being used by the Turkish military forces as hospitals or camps, and 13 are used as agricultural barns.[27]

A serious project to systematically catalog and identify the religious monuments destroyed or desecrated in the northern part of Cyprus was undertaken under the aegis of the Museum of the Holy Monastery of Kykkos, located in the south, where the government of Cyprus is in control.[28] The Museum established a committee of experts, including university professors, an archaeologist, and an authority on the Byzantine period, to create an electronic database of the existing monuments and religious sites in the northern part of Cyprus. The

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URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html. Based on national reports, UNESCO publishes its own reports.

[23] UNESCO, INFORMATION ON THE IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT: 1984 REPORTS 25 (Dec. 1984), *available at* http://unesdoc.unesco.org/images/0006 /000623/062387eb.pdf.

[24] *Id.*

[25] *Id.*

[26] UNESCO, INFORMATION ON THE IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT: 1989 REPORTS 11 (Nov. 1989), *available at* http://unesdoc.unesco.org/images /0008/000855/085585eo.pdf.

[27] Ministry of Foreign Affairs of the Republic of Cyprus, *Destruction of Cultural Heritage* (July 2006), *available at* http://www.mfa.gov.cy/mfa/mfa2006.nsf/cyprus07_en/cyprus07_en?OpenDocument.

[28] CHOTZAKOGLOU, *supra* note 18, at 28-29.

database contains 20,000 photographs and pieces of registration data, which describe in detail the monuments and religious sites inspected. In particular, the database contains the registration data of 500 Christian churches and chapels in the northern part of Cyprus. It also includes 50 additional monuments, which are located in military areas controlled by the Turkish armed forces or in the buffer zone, under the watch of the UNFICYP. Most of these monuments belong to the Autocephalous Orthodox Church of Cyprus, while a few belong to the Armenians, Maronites, Catholic Church, and Jewish community.[29]

Other reported acts of vandalism include the rent or sale of medieval Christian churches and cemeteries to Turkish residents[30] or to European citizens who use the places as commercial offices, private museums, or stores.[31] The seventy-seven churches that were converted into mosques with minarets had text from the Koran inscribed where icons and paintings used to be.[32] Other religious monuments have been transformed into hospitals or camps for the use of Turkish armed forces.[33] A few specific examples are worth noting. The monastery of Saint Anastasia, located in the occupied village of Lapithos was converted into a hotel, with a swimming pool and a casino, and named "Anastasia Resort Hotel."[34] The monastery of Antiphonetes, a significant monastic center of the Byzantine era, with ornate murals and valuable icons, was destroyed, looted, and subsequently sold by art dealers.[35] The mosaics of the Churches of Holy Virgin Kyra and Kanakaria, which are deemed to be among the most significant monuments of Cyprus' history, have been destroyed, removed, and illegally exported, to be sold abroad.[36] A large number of icons and other church objects have disappeared.[37] It should also be noted that important private collections of Greek Cypriots who fled the north—the most notable case was the Hadjiprodromou private collection of 2,000 objects—were stolen and sold at auctions abroad.[38] The Government of Cyprus, along with the Church of Cyprus, has made considerable efforts and continues to do so in an effort to locate and assist in the return of cultural property.[39]

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[29] The Armenian Church of Cyprus was plundered and icons and manuscripts from the only Armenian monastery in Cyprus have been sold to art collectors abroad. The monastery was saved from being converted into a hotel through the efforts of the Armenian Prelature of Cyprus, the government of Cyprus, and international organizations. *See* Embassy of the Republic of Cyprus in Washington, D.C., *Cultural Heritage of Cyprus*, http://www.cyprusembassy.net/home/index.php?module=page&cid=10.

[30] CHOTZAKOGLOU, *supra* note 18, at 40, 150.

[31] *Id.* at 43.

[32] *Id.* at 50.

[33] *Id.* at 60.

[34] *Id.* at 74. *See also Cyprus denounces destruction of religious monuments*, THECYPRIOT.COM, June 24, 2008, *available at* http://www.thecypriot.com/pages/tempalp.aspx?ID=807&sub=1.

[35] CHOTZAKOGLOU, *supra* note 18, at 125.

[36] *Id.* at 122.

[37] *Id.*

[38] Carolyn V. Bachman, *An Introduction to the Issue of Preserving Cultural Heritage*, 15 BROWN CLASSICAL J. (2003), *available at* http://www.brown.edu/Departments/Classics/bcj/15-07.html.

[39] Their efforts were successful in some cases, including in the case of the mosaics from the Kanakaria Church, which were returned to the Church of Cyprus after a successful suit was instituted in the United States, as discussed below.

Foreign archaeological teams that were engaged in excavations in Cyprus were forced to discontinue their work after the 1974 events. Their valuable findings have been looted and the teams have not been able to return and resume their excavations.[40] According to some estimates, through illegal excavations in the northern part of Cyprus, more than 60,000 Cypriot artifacts have been stolen and exported abroad to be sold in auction houses or by art dealers.[41] The example of an ancient site dating from Neolithic times at the Cape of St. Andreas illustrates this point. The site, which had already been excavated under the aegis of the Department of Archaeology prior to 1974, was later damaged by the Turkish armed forces during the installation and hoisting of the flags of Turkey and the "TRNC."[42]

Another example of excavation in the northern part of Cyprus was the one carried out in the archaeological area of Salamis in the northern part of Cyprus under the aegis of the University of Ankara. It has been reported that numerous archaeological findings have been looted and auctioned abroad.[43] The Government of the Republic of Cyprus claims that such excavations are illegal and destroy the cultural heritage of Cyprus. The "TRNC" denies such allegations. To refute the claims, the Permanent Representative of Turkey to the United Nations argued in a letter dated September 6, 2001, that the area of Salamis "is situated within the sovereign territory of the Turkish Republic of Northern Cyprus, that any excavations are carried out with the consent of the Turkish Cypriot authorities and, contrary to the Greek-Cypriot allegations are perfectly legal."

In his letter, the Permanent Representative of Turkey also argued that during the period of 1963-1974, Greek-Cypriots engaged in acts of destruction of shrines, mosques, and other holy sites in Turkish villages.[44] On Cyprus' behalf, however, since 1989, the Department of Antiquities of Cyprus has been involved, as the need arose and based on budget allocations, in the restoration and renovation of all mosques which are deemed "ancient monuments." In 2000, the Department began a more systematic restoration of Moslem monuments. So far, the Department has renovated 17 mosques and mausoleums at a cost of approximately €471,585 (about US$599,943).[45] The restoration project is expected to be completed by 2010.

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[40] Jessica Dietzler, *The Case of Cyprus: SAFE Interviews Dr. Pavlos Flourentzos, Director of the Department of Antiquities of Cyprus*, SAVING ANTIQUITIES FOR EVERYONE (SAFE), *available at* http://www.savingantiquities.org/feature_cyprusinterview.php.

[41] For more information, *see* Ministry of Foreign Affairs of the Republic of Cyprus, *Destruction of Cultural Heritage*, http://www.mfa.gov.cy/mfa/mfa2006.nsf/cyprus07_en/cyprus07_en?OpenDocument (last visited Mar. 9, 2009).

[42] *Id.*

[43] *Id.*

[44] Annex to the Letter Dated 6 September 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the Secretary-General, A/55/1032-S/2001/853 (Sept. 7, 2001), *available at* http://un.org/documents/ga/docs /55/a551032.pdf.

[45] CHOTZAKOGLOU, *supra* note 18, at 139. *See also* MUSLIM PLACES OF WORSHIP IN CYPRUS (Association of Cypriot Archaeologists, 2005) (illustrating through the examples of various renovated mosques the efforts of the Cyprus Government to respect and safeguard cultural property located in areas under its control).

## IV. Cyprus' Legal Framework on Cultural Property

### A. Domestic Legislation

There is no universally agreed upon and accepted definition of cultural property in the international community.[46] The concept and scope of the term "cultural property" vary according to the various international legal instruments that are applicable and the national legislation of each country.[47]

Nations that are rich in archaeological and/or religious monuments are considered "source" nations.[48] Source nations customarily enact two types of legislation in order to protect their cultural heritage and curb the looting and illicit export of artifacts from their borders, including:

a) National ownership laws that define what the term "cultural property" encompasses. Such laws may facilitate a country's legal claims before foreign or international courts in order to recover lost or stolen objects; and

b) Export restrictions on archaeological or religious objects or artifacts related to the arts or sciences. This type of all-encompassing legislation is called "blanket or umbrella" laws.[49]

Cyprus, as a source nation, has enacted laws to define what constitutes cultural property and which assert national ownership and control over its cultural property.[50]

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[46] Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 363, *citing* John H. Merryman, *The Retention of Cultural Property*, 21 U.C. DAVIS L. REV. 477 (1988).

[47] Information Kit, UNESCO, Protect Cultural Property in the Event of Armed Conflict, the 1954 Convention and its Two Protocols (1954 and 1999), http://portal.unesco.org/culture/en/ev.php-URL_ID=35312&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html.

[48] John Henry Merryman, *Two Ways of Thinking about Cultural Property,* 80 AM. J. INT'L L. 831, 832 (1986).

[49] *Id.*

[50] Turkey has also adopted legislation on cultural property. Law No. 2863 on the Protection of Cultural and Natural Heritage of 1983, as amended in 1987 and 2004. There are two implementing regulations: (a) On Movable Cultural Goods Having Ethnographical Value, No. 19803/1988: and (b) On Export and Import of Movable Cultural and Natural Property to be Preserved, No. 18314/ 1984. The Minister of Culture is the designated authority to regulate the procedures of temporary removal of movable cultural goods from Turkey. In 2006, Turkey, in preparation for harmonizing its domestic legislation with that of the European Union *acquis communautaire* (body of law) chapter 29 on Customs Union, sent a draft text to the European Commission to transpose Council Directive 93/7/, 1993 O.J. (L74) and is working on eventual transposition of Council Regulation 3911/92, 1992 O.J. (L395). In addition to the international agreements to which Turkey is a party that are stated in the report, Turkey has ratified the following conventions: UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, which entered into force on April 20, 1982, *available at* http://whc.unesco.org/archive/convention-en.pdf; Council of Europe, European Convention on the Protection of the Archaeological Heritage, 1969 CETS 066 (2000), *available at* http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=066&CM=8&DF=3/19/2009&CL=ENG, *revised in* 1992 CETS 143, *available at* http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=143&CM=8&DF=3/19/2009&CL=ENG; Council of Europe, Convention for the Protection of the Architectural Heritage of Europe, 1985 CETS 121, *available at* http://conventions.coe.int/Treaty/Commun/

The 1935 Antiquities Law, as amended, which lists many buildings, etc., in an Annex, specifies in its Article 1 that the following qualify as ancient monuments:

a) Any object, building, or site included in the Annex; and,
b) Any other object, building, or site which is declared to be so by the Council of Ministers.[51]

The law defines "antiquity as":

> ...any object, movable or immovable, which constitutes a work of architecture, sculpture, graphic art, painting or generally any form of art which has been built, sculptured, painted or inscribed or generally made by humans prior to 1850 A.D., and which was found, discovered or excavated in Cyprus or was recovered from the territorial waters of Cyprus.[52]
>
> For ecclesiastical works which are of great archaeological or artistic or historic value the year 1940 A.D. shall be considered rather than 1850 A.D.[53]

The definition of "antiquity" includes movable and immovable items, ancient monuments, and buildings that are included in the Annex. Additional monuments can be added to the Annex by a decision of the Councils of Ministers.[54] The broad language of the law referring to "any form of art, which has been built, painted or made by humans," read in conjunction with the specific provision regarding ecclesiastical works which possess artistic, historic, or archaeological value leads to the conclusion that churches, chapels, or monasteries, including icons and other church objects fall within the definition and scope of the Cyprus Antiquities Law. More importantly, in addition to historic monuments, the Annex contains a number of churches that have been specifically deemed to be ancient monuments.

Two sections in the Cyprus Antiquities Law bestow ownership of antiquities upon the Government of Cyprus:

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QueVoulezVous.asp?NT=121&CM=8&DF=3/19/2009&CL=ENG; and Council of Europe, European Landscape Convention, 2003 CETS 176. *See* SCREENING CHAPTER 29 CUSTOMS UNION AGENDA ITEM 4: CULTURAL GOODS (COUNTRY SESSION: THE REPUBLIC OF TURKEY), Mar. 13-14, 2006 (PowerPoint presentation), *available at* http://www.abgs.gov.tr/tarama/tarama_files/29/SC29DET_Cultural%20Goods.pdf.

[51] Antiquities Law art. 1, 3 NOMOI TES KYPRIAKES DEMOKRATIAS, LAWS OF THE REPUBLIC OF CYPRUS 36 (2000).

[52] *Id.* The territorial waters of Cyprus extend to 12 nautical miles by virtue of Law 45 of 1964.

[53] *Id.*

[54] *Id.* art. 6(as). Since 1974, the Government of Cyprus has added a number of other monuments to the Annex, including the Church of Panagia Ypatis and the Monastery of Agios Panteleimon in the District of Kyrenia; the following churches in the Famagusta District: Agios Thyrsos, Agia Solomoni, Metamorphosis Soteros, Archangel Michael; and in Rizokarpaso, the Monastery of Apostolos Andreas. Information provided to the author by officials of the Cyprus government, Mar. 2009.

a) Article 3 provides that ownership of all antiquities lying undiscovered in any land when the law entered into force in 1935 "shall be the property of the government";[55] and,

b) Article 7 provides that the ancient monuments included those listed in the Annex, as well as any monument that is added at a later time, "shall be the property of the government." Since 1974, the government has added additional monuments to the list.

Preservation and restoration of cultural property falls within the purview of the Department of Antiquities of the Ministry of Communications and Works. This Department is legally authorized to ensure that cultural property is protected and safeguarded in Cyprus.[56] Since 1999, a special squad for art has been established by the Cyprus police.[57]

The Antiquities Law prohibits excavations without a prior obtained license from the Director of Antiquities.[58] Violators face imprisonment and fines.

### B. European Union Legislation

Cyprus transposed the EU legislation on cultural property to its domestic legislation prior to joining the EU on May 1, 2004. Thus, in 2002, Cyprus adopted the following two pieces of legislation:

- The Return of Cultural Objects Law No. 183(1) of 2002. Through this law, Cyprus harmonized its domestic legislation with the EEC Directive 93/7/EEC, as amended. The Directive deals with the return of cultural objects unlawfully removed from the territory of a member State.[59] As required by the Directive, Cyprus has designated the Antiquities Department of the Ministry of Communications and Works as the central authority to deal with cultural property issues.[60]

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[55] Antiquities Law art. 3.

[56] The Department of Antiquities of the Ministry of Communications and Works was established in 1935 pursuant to the Antiquities Law. See Republic of Cyprus, Department of Antiquities, *Historical Background*, http://www.mcw.gov.cy/mcw/da/da.nsf/DMLhistory_en/DMLhistory_en?OpenDocument (last visited Mar. 9, 2009).

[57] S. Hadjisavvas, *The Destruction of the Archaeological Heritage of Cyprus*, A SYMPOSIUM ON ILLICIT ANTIQUITIES: THE DESTRUCTION OF THE WORLD'S ARCHAEOLOGICAL HERITAGE (1999), *available at* http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue5/brodie-watson.htm#Cyprus.

[58] Antiquities Law art. 14.

[59] The Return of Cultural Objects Law No. 183(1) of 2002, *transposing* EEC Directive 93/7/EEC, 1993 O.J. (L 774), *amended by* Council Directive 96/100/EC O.J.L. (60) 59, *and* Council Directive 2001/38/EC O.J. (L 187) 43.

[60] Antiquities Law art. 4.

- Law 182(1) of 2002 on the Export of Cultural Goods. The Law was enacted in order to enforce the European Community Regulations on the export of Cultural Goods.[61] Some important features of the Law are:
    a) Prohibition of the export of any cultural object to third countries (non-EU countries) without an export license;
    b) Establishment of a committee to decide as to whether or not a license should be granted;
    c) Assignment to the Antiquities Department of the task of securing the validity and authenticity of export licenses; and,
    d) Establishing criminal penalties of imprisonment of up to four years and/or a fine not exceeding more than 2,000 pounds (about US$4,311) to anyone who exports or attempts to export cultural goods.

In addition, Cyprus has ratified a series of international agreements dealing with cultural property. These agreements are detailed in the following section. Cyprus has also entered into bilateral agreements with China and the United States regarding import restrictions on archaeological artifacts.[62] In July 2007, a Memorandum of Understanding (MOU), initially signed with the United States in 2002, was extended until 2012. Under the MOU, the U.S. Department of Homeland Security (DHS) is authorized to enforce import restrictions on pre-classical and classical archeological objects,[63] religious artifacts dating back to the Byzantine era,[64] and ethnological materials, which are not accompanied by an export license issued by Cyprus. In addition to extending the duration of the MOU, the scope of the MOU was expanded to include ancient coins on the list of items that are restricted.[65] As long as the looting and illegal export of cultural objects from Cyprus continues, the government of Cyprus considers the

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[61] Law 182(1) of 2002 on the Export of Cultural Goods, enforcing Regulation (EEC) No 3911/92 Relating to the Export of Cultural Goods, 1992 O.J. (L 395) 1, as amended.

[62] In an effort to safeguard their rich cultural heritage, Cyprus and China signed a Memorandum of Understanding dealing with the prevention of theft, illegal excavations and illicit import and export of cultural property on May 8, 2008. *See* Announcement, Republic of Cyprus, Department of Antiquities, Cyprus-China Agreement on Cultural Property, http://www.mcw.gov.cy/mcw/DA/DA.nsf/DMLnews_en/DMLnews_en?OpenDocument.

[63] Import Restrictions Imposed on Pre-Classical and Classical Archaeological Material Originating in Cyprus, 67 Fed. Reg. 47,447 (July 19, 2002) (codified at 19 C.F.R. pt. 12), *available at* http://www.mcw.gov.cy/mcw/DA/DA.nsf/All/0248A261B04159FAC2257204002595CE/$file/ Cyprus%20designated%20list.pdf.

[64] Import Restrictions on Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus, 71 Fed. Reg. 51,724 (Aug. 31, 2006) (codified at 19 C.F.R. pt. 12), *available at* http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=128422356138+0+2+0&WAISaction=retrieve.

[65] Adding coins has stirred some criticism by those who argue that such a move was unnecessary in the absence of serious systematic looting from Cyprus. Pavlos Flourentzos, Director of the Department of Antiquities of Cyprus, emphasized in an interview the significance of ancient coins to Cyprus' history especially because of the lack of ancient written sources, and noted that in numerous instances, the Cyprus police along with the Antiquities Department had joined forces to apprehend smugglers of coins. In October 2007, they arrested five smugglers who had stolen numerous artifacts along with several dozen coins. *See* Dietzler, *supra* note 40.

MOU as a very important instrument to prevent illicit export. The government intends to begin negotiations with the United States to renew the MOU in due course.[66]

## V. Definitions of Cultural Property Under International Legal Instruments

As stated above, there is no uniform definition of "cultural property." The term was introduced by the 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict[67] and its two Protocols, adopted in 1954 and 1999.[68] These documents provide the following comprehensive definition, irrespective of origin or ownership:

> a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites, groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
>
> b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); and,
>
> c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments."[69]

This definition is a non-exhaustive definition of the term "cultural property," as the phrase "such as" suggests. It explicitly encompasses a wide variety of cultural property, including religious monuments, movables or immovables that are "of great importance to the cultural heritage of every people." The notion of "religious monuments" includes all places of worship, including those used by Christians, Muslims, Jews, and others.

In order to qualify for international protection, religious monuments must also meet the standard of being of vital significance to the cultural heritage of "every people." The phrase "every people" *prima facie* carries two meanings: a) of all people jointly; or b) of each respective people.[70]

The French and Spanish texts of the 1954 Hague Convention, which are also authoritative, do not clarify what the term signifies since both refer to the cultural heritage "of peoples." It has been asserted that the second meaning is the more appropriate, which refers to

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[66] Information provided to the author by officials of the Cyprus government, Mar. 2009.

[67] 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict (1954 Hague Convention), *signed* May 14, 1954, *entered into force* Aug. 7, 1956, 249 U.N.T.S. 240-88, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[68] For a discussion of the 1954 and 1999 Protocols, *see* Parts VI and VII, *infra*.

[69] 1954 Hague Convention, *supra* note 67, art. 1.

[70] ROGER O'KEEFE, HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 437 (2007).

the movable and immovable property of great importance to the cultural heritage of each respective party to the Convention.[71]

Other international legal instruments employ different terminology. Protocols I and II to the 1949 Geneva Conventions use the terms "cultural objects" and "places of worship."[72] Article 53 of Additional Protocol I, which applies in situations of international armed conflict, prohibits specifically acts of hostility against "historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples." Consequently, churches and other places of worship which are part of the "cultural or spiritual heritage of peoples," fall within the scope of Article 53.

The language of Article 53 indicates that religious sites must be protected if they meet the criterion of being part "of the cultural or spiritual heritage of peoples." Thus, it appears that the notion of cultural property under Protocol I has a broader scope than that provided for in the 1954 Hague Convention, which, as stated above, limits protection to cultural property that is "of great importance to all peoples."[73] However, the Commentary on the Additional Protocols confirms that "both texts connote the same basic idea," despite this difference in terminology.[74]

Among other international agreements, neither Article 56 of The Hague Convention (IV) Respecting the Laws and Customs of War on Land of October 18, 1907, nor the regulations annexed to it, define cultural property. The Convention does, however, refer explicitly to the elements of cultural property–that is, institutions dedicated to religion, charity, education, and the arts and sciences–and prohibits the destruction or willful damage to these institutions.[75]

The definitions adopted by contemporary courts and tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the 1998 Rome Statute of the International Criminal Court (ICC) are also pertinent to the review of the definition of cultural property.

Article 3(d) of the ICTY statute, entitled Violations of the Laws or Customs of War, provides that "seizure, destruction, or willful damage done to institutions dedicated to religion,

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[71] ROGER O'KEEFE, PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT 104 (2006).

[72] 1977 Geneva Protocol I, Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflict, art. 53, 1125 U.N.T.S. 4, *available at* http://www.icrc.org/ihl.nsf/ 7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079; and 1977 Geneva Protocol II, Additional to the Geneva Convention of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflict, art. 16, 1125 U.N.T.S. 610, *available at* http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument.

[73] For a further discussion of the definition of cultural property, *see* Eduard Serbenco, *The Protection of Cultural Property and Post-Conflict Kosovo*, 18.2. REV. QUEBECOISE DR. INTER. 96 (2005).

[74] CLAUDE PILLOUD ET AL., ICRC COMMENTARY ON THE ADDITIONAL PROTOCOLS OF JUNE 8, 1977 TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949 at 27, *cited in* Hirad Abtahi, *The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia*, 14 HARV. HUM. RTS. J. 8 (2001).

[75] DOCUMENTS ON THE LAWS OF WAR 55 (A. Roberts & R. Guelff, eds., 1989).

charity and education, the arts and sciences, historic monuments and works of art and science" are viewed as violations of the laws or customs of war.[76]

Article 8, paragraph 2(b)(ix), of the Rome Statute of the ICC explicitly declares as war crimes intentional attacks "against buildings dedicated to religion, education, art, science or charitable purposes, [and] historic monuments ... provided they are not military objectives."[77]

Based on the above, religious monuments in the northern part of Cyprus and artifacts used for religious rituals and purposes and which signify Cyprus' deep links to Christianity clearly fall within the definition of the documents mentioned above and require the international protection accorded by the relevant provisions. It could also be asserted that certain places of worship dating from the Byzantine era in the northern part of Cyprus may additionally qualify as historic or architectural buildings that are of great importance to the cultural heritage of Cyprus.

## VI. Protection of Cultural Property During Armed Conflict and Occupation

Irrespective of whether the 1974 armed conflict in Cyprus was lawful or unlawful (the legality of the resort to armed conflict is subject to the United Nations Charter and the law known as *jus ad bellum*), the continuing occupation of its northern part and the ensuing destruction of religious sites and other historic monuments in general, fall within the scope and application of the legal regime of international humanitarian law, that is, the law of armed conflict. Protection of cultural property during armed conflict and occupation is governed by the following international legal instruments:

- The 1907 Hague Regulations;
- The fundamental 1954 Hague Convention on the Protection of Cultural Property During Armed Conflict, its Regulations, and its subsequent Protocols; and
- The 1949 Geneva Conventions and Protocols.

A number of other international instruments against religious intolerance are applicable, along with the 1993 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage. Even though these documents lack binding force under international law, they nevertheless possess normative value and are declaratory of the views of the international community on protection of religious sites for posterity and against religious aggression.

It should also be noted that the legal literature suggests that actions to completely obliterate any religious or other physical symbols of an ethnic or religious group could, in extreme situations, amount to "cultural genocide."[78] Raphael Lemkin, the Polish law professor

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[76] ICTY, Updated Statute Of The International Criminal Tribunal For The Former Yugoslavia (Feb. 2008) (unofficial compilation), *available at* http://www.un.org/icty/legaldoc-e/basic/statut/statute-feb08-e.pdf.

[77] Rome Statute of the ICC art. 8, para. 2(b)(ix), *available at* http://www2.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf (last visited Mar. 4, 2009).

[78] *See, e.g.*, PATRICK BOYLAN, REVIEW OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT 121 (1993), *available at* http://unesdoc.unesco.org/images/0010/001001/100159eo.pdf.

who coined the term "genocide" in 1944, described eight elements of genocide: biological, cultural, economic, moral, political, physical, social, and religious; each one referring to a different aspect that forms part of the existence of a people or a particular group. Cultural genocide may occur when institutions or objects devoted to religious, artistic, literary, or other cultural activities are destroyed during armed conflicts and occupations, but also in other instances when elements that constitute the culture of an ethnic group, such as language or traditions and rituals, are restricted or prohibited.[79]

The earlier drafts of the text of the 1948 Genocide Convention included language that prohibited cultural genocide, stating:

> (e) systematic destruction of historic or religious monuments or their diversion to alien uses, destruction or dispersal of documents and objects of historical, artistic or religious value and objects used in religious worship.[80]

However, the above paragraph was not included in the final text of the Genocide Convention, although the Convention did include the phrase "causing serious mental harm," which could arguably apply in situations where there is systematic and pervasive destruction and desecration of religious sites and objects,[81] as in the northern part of Cyprus.

### A. Protection of Cultural Property During Armed Conflict

#### 1. 1907 Hague Regulations[82]

Three Articles of the 1907 Hague Regulations, which are annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, may have a bearing on the destruction of cultural property that occurred during the 1974 armed conflict in Cyprus. They are:

- Article 27, which states that in sieges and bombardments, a party to a conflict must take all necessary measures to spare, as far as possible buildings dedicated to religion, art and historic monuments, as long as they are not used for military purposes;[83]
- Article 47, which formally prohibits pillage; and,[84]

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[79] David Nersessian, *Rethinking Cultural Genocide Under International Law*, Series 2, No. 12 HUM. RTS. DIALOGUE: CULTURAL RTS. 7 (Carnegie Council on Ethics and Int'l Affairs, Spring 2005), *available at* http://www.cceia.org/resources/publications/dialogue/2_12/section_1/5139.html.

[80] BOYLAN, *supra* note 78.

[81] *Id.*

[82] The 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, Oct. 18, 1907, 36 Stat. 2277, TS 539, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 46, *also available at* http://www.icrc.org/ihl.nsf/FULL/195.

[83] *Id.*

[84] *Id.* art. 47.

- Article 56, which provides that property dedicated to religion, charity or education, and the arts or sciences, even when it is state property, shall be considered private property. Article 56 also clearly prohibits the seizure, destruction, or willful damage to religious monuments, works of art, and science, and states that such actions "should be made the subject of legal proceedings."[85]

The Hague Convention of 1907, however, contains a general "participation clause." This clause provides that the agreement is applicable only if all the belligerents are parties to the agreement.[86] Application of the 1907 Hague Convention and its regulations to Cyprus and the Turkish occupation is uncertain, as explained below.

Turkey signed the Convention on October 18, 1907. At that time, Turkey made a reservation regarding Article 3. Article 3 provides for the liability of a belligerent party that is found to be in violation of its provisions, requiring such a party to pay compensation and be responsible for all acts committed by persons forming part of its armed forces. Turkey did not subsequently ratify the Convention. Turkey had, however, ratified the 1899 Hague Convention II Respecting the Laws and Customs of War on Land, which is the precursor to the 1907 Hague Convention. Therefore, Turkey could, as a result of that action, now be considered to be bound by the 1907 Hague Convention.[87]

On the other hand, Cyprus did not exist as an independent state at the time of the 1907 Convention. Further, Cyprus did not sign or ratify the Convention after it became an independent state in 1960. Thus, it would appear that the 1907 Hague Convention is not applicable to Cyprus. An argument based on customary international law can be made, however, that the 1907 Hague Convention regulations are applicable to the situation between Cyprus and Turkey.

The 1946 Nuremberg International Military Tribunal[88] confirmed that the 1907 Hague Regulations, including Articles 27 and 56 related to the protection of cultural property, have reached the status of customary international law. Consequently, the 1907 Hague Convention Regulations could be considered to be applicable to and binding even on states that were not parties to the 1907 Hague Convention.

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[85] *Id.* art. 56. Chrysostomides, citing Schwarzebberger, states that the phrase "should be made the subject of legal proceedings" indicates that destruction raises an obligation for the occupying power, Turkey, to take legal action against violators, whether they are civilians or members of armed forces. CHRYSOSTOMIDES, *supra* note 1, at 194.

[86] 1907 Hague Convention IV Respecting the Laws and Customs of War on Land art. 2.

[87] The precursor of the 1907 Hague Convention IV was 1899 Hague Convention II Respecting the Laws and Customs of War on Land. The 1907 Convention was intended to replace the 1899 Hague Convention; however eighteen state parties to the 1899 Convention did not ratify the 1907 Hague Convention. Turkey was among them. The original signatories to the 1899 Hague Convention remain bound by the 1899 Convention. DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 4.

[88] Information Kit, UNESCO, *supra* note 47.

2. 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict

The 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict (hereafter the 1954 Convention),[89] introduced the term "cultural property."[90] Its preamble reaffirms the significance of cultural property as a symbol of cultural heritage for all mankind. The 1954 Convention applies:

- In the event of declared war;
- In the event of any other armed conflict that may arise between two or more of the contracting parties, even if the state of war is not recognized by the parties to the conflict;
- During partial or total occupation; and,
- During peacetime. A number of provisions pertaining to the responsibilities of contracting states to safeguard the cultural property in their territory are applicable.[91]

The 1954 Convention imposes certain obligations and responsibilities on the contracting parties pertaining to the protection of cultural property. Under Article 2 of the 1954 Convention, the obligation to protect cultural property has two components:

(i) Safeguarding, as provided in Article 3; and,

(ii) Respect, as provided in Article 4.

Both Articles have achieved the status of customary international law.[92]

The obligation to safeguard cultural property, imposed in Article 3 of the 1954 Convention, requires states to take any necessary and appropriate measures based on their financial means during peace to safeguard the cultural property situated within their territory to ensure its integrity against any foreseeable effects during a potential armed conflict.[93] This obligation was included to signify the importance of cultural property not only for the state itself but for the entire international community.[94]

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[89] 1954 Hague Convention, *supra* note 67.

[90] The 1954 Hague Convention states that the drafters were influenced by the principles pertaining to the protection of cultural property during armed conflict, as contained in earlier Hague Conventions of 1899 and 1907 and the Washington Pact of 1935. *Id.*

[91] *Id.* art. 18.

[92] *See* Francesco Francioni and Federico Lenzerini, *The Obligation to Prevent and Avoid Destruction of Cultural Heritage: From Bamiyan to Iraq*, *in* ART AND CULTURAL HERITAGE 34 (Barbara T. Hoffman, ed., 2006).

[93] 1954 Hague Convention, *supra* note 67, art. 3.

[94] *Id.*

Cyprus and Turkey acceded to the 1954 Convention on September 9, 1964, and December 15, 1965, respectively.[95] The 1974 events between Turkey and Cyprus, irrespective of whether one defines them as "war," "armed conflict,"[96] or by other comparable terms,[97] fall within the scope and applicability of the 1954 Convention.

The *travaux préparatoires* (legislative history) of the Convention indicates that "measures to safeguard cultural property" include actions such as protection against possible fire or collapse of buildings, measures to relocate movables to special refuges, etc.[98] The concept of safeguarding cultural property and what it entails was further elucidated in the Second Protocol to the 1954 Hague Convention signed in 1999 (hereafter, 1999 Protocol).[99] That Protocol provides that states may take specific measures, including preparation of inventories, removal of movable cultural property, and protection *in situ*.[100] Pursuant to the 1954 Convention, the Cypriot authorities had the right to request technical assistance from UNESCO on safeguarding the cultural property located in Cyprus.

As a newly emerged state, Cyprus had to deal with political instability due to inter-communal strife during 1963-1964. Nevertheless, the Cyprus authorities did request technical assistance from UNESCO, as provided for in the Convention, to provide guidance to them as to the best practices for the conservation of mosaics and ancient built tombs with reliefs, and for the Saint Sophia Gothic Cathedral in Nicosia, under the supervision and direction of Dr. Carlo M. Musso, a UNESCO expert. A small number of private collections of antiquities were also registered.[101] Moreover, pursuant to Article 3 of the Convention, Cyprus as a party to the Convention is allowed to use its discretion "as [it] considered appropriate," to allocate available financial and technical resources, and to take measures to safeguard its cultural property.

It must be pointed out that the Convention does not allow a party to use another contracting state's failure to take measures to safeguard its property during peace time as an excuse to evade its own fundamental responsibility to respect cultural property in the event of armed conflict.[102] Consequently, in the case under consideration, irrespective of whether or not

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[95] *See* UNESCO Ratification and Accession List, 1954 Hague Convention, http://erc.unesco.org/cp/convention.asp?KO=13637&language=E.

[96] The ICTY Appeals Chamber stated in the Tadic case that "an armed conflict exists whenever there is resort to armed force between States." Anthony Cullen and Marko Divac Öberg, *Prosecutor v. Ramush Haradimjnaj et al: The International Criminal Tribunal for the Former Yugoslavia and the Threshold of Non-International Armed Conflict in International Humanitarian Law*, 12 ASIL INSIGHTS No. 7 (Apr. 23, 2008), *available at* http://www.asil.org/insights080423.cfm.

[97] DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 1.

[98] O'KEEFE, *supra* note 71, at 113.

[99] Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999 Protocol), The Hague, Mar. 26, 1999, *entered into force* Mar. 9, 2004, 2253 U.N.T.S. 172, *available at* http://www.icrc.org/ihl.nsf/FULL/590?OpenDocument.

[100] *Id.* at 250.

[101] 1954 Hague Convention, *supra* note 67, art. 23(1). Information on assistance offered by UNESCO provided to the author by officials of the Cyprus government, Mar. 2009.

[102] 1954 Hague Convention, *supra* note 67, art. 4, para. 5.

Cyprus had taken measures to safeguard its religious sites and other cultural property prior to the 1974 invasion and subsequent occupation, the destruction of cultural property that ensued could arguably give rise to Turkey's responsibility under international law.

The crux of the protection afforded to cultural property by the 1954 Hague Convention is embodied in Article 4 of the Convention. Under that Article, Turkey was required to take the following course during the military invasions of July and August 1974:

- Refrain from using cultural property and its immediate surroundings for purposes that were likely to expose it to destruction or damage during an armed conflict;
- Avoid any act of hostility against such property;
- Prohibit, prevent, and if necessary stop any form of theft, pillage, or misappropriation and any acts of vandalism against cultural property; and,
- Refrain from any act against cultural property as a reprisal.[103]

The 1999 Protocol to the Hague Convention imposes additional precautionary measures to be taken by the states that are parties to the Protocol. Turkey has not ratified the Protocol, thus it is not bound by it. The additional measures require a state to:

- Ensure that the items to be attacked are not cultural property;
- Take any feasible precautions in terms of means and methods in order to avoid or minimize any incidental damage to cultural property;
- Refrain from launching any attack that may be expected to bring about incidental damage to cultural property and "which would be excessive in relation to the concrete and direct military advantage anticipated"; and,
- Not to carry out, or to suspend the attack, if it is obvious;
  a) That the objective is cultural property; and,
  b) That the attack may be expected to cause incidental damage to cultural property.[104]

During the summer of 1974, the Acting-Director General of UNESCO sent telegrams to both parties to the conflict to remind them of their obligations, specifically arising from Article 4 of the 1954 Convention, to respect cultural property.[105] As reported:

> [N]ot having received any acknowledgment from the government of Turkey the Acting-Director General sent a further telegram to that Government ... recalling the terms of the previous telegram and expressing his concern [over] the fate of important archaeological and historical monuments and sites as well as other cultural property in

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[103] *Id.* art. 4.

[104] 1999 Protocol, *supra* note 99, art. 7.

[105] O'KEEFE, *supra* note 71, at 179, *citing* UNESCO reports.

> areas controlled by the Turkish army; he also appealed to the Government of Turkey to do its utmost to safeguard the cultural property and referred again to Article 4, paragraph 1 of the Convention.[106]

An initial report prepared by a consultant sent to Cyprus by UNESCO to assess the situation and make recommendations stated that in Paphos, an area in southern Cyprus, the Mosaics of the House of Dionysos, which were damaged during the Turkish invasion in July 1974, had been repaired by the Cyprus government. A mission was sent to the northern part of Cyprus in October of 1974. A UNESCO consultant reviewed the situation in March and June of 1975 and determined that "less had been accomplished to protect antiquities than had been hoped."[107] Later, the Director General of Antiquities came to the northern part of Cyprus from Turkey and made several recommendations, including the drafting of legislation on antiquities based on Turkish law, severe penalties for those who engage in stealing and exporting cultural property and the collection and cataloguing of all objects. Even if some of the recommendations were initially implemented under the guidance of UNESCO, the current situation, as documented, portrays the pillage and desecration of religious sites and other cultural property that has taken place in the northern occupied area. It should also be noted that after the adoption of UN Security Council resolutions in 1983 and 1984, which urged the international community not to recognize the secessionist actions of the "TRNC," UNESCO was precluded from visiting and providing expert advice to the "TRNC" on cultural property issues; to do otherwise would be contrary to the UN Resolutions and its actions could imply recognition of the "TRNC."

### *a. Special Protection*

Under the 1954 Hague Convention, parties may designate a limited number of refuges that are intended to shelter movable cultural property,[108] or centers which contain monuments and other immovable cultural property "of very great importance," provided that such refuges meet two critical conditions:

(i) They must be located an adequate distance from any important military target, such as an airport or any large industrial center; and,

(ii) They are not used for military purposes.

The Convention established an International Register of Cultural Property. Member States are entitled to submit an application to the Director General of UNESCO to register centers containing monuments.[109] Cyprus has not entered any monuments in the International Register yet; according to government officials, however, it intends to prepare a list of

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[106] *Id.*

[107] J. DALIBARD, CYPRUS: STATUS ON THE CONSERVATION OF CULTURAL PROPERTY 3 (UNESCO, Jan. 1976) (internal report), *available at* http://unesdoc.unesco.org/images/0002/000217/021772eb.pdf.

[108] No refuge to protect movable cultural property has been designated by the Cyprus government.

[109] Article 12 of the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 354, *available at* http://www.icomos.org/hague/hague.regulations.html (last visited Mar. 25, 2009).

monuments to submit to UNESCO. In case of occupation, the occupying power is competent to submit to the Director an application for registration.[110] Monuments that enter the International Register enjoy immunity from attacks unless they are used for military purposes.[111]

*b. Enhanced Protection*

The attempt to provide special protection to cultural property under the 1954 Hague Convention has reportedly never worked in practice.[112] Consequently, the 1999 Protocol to the 1954 Convention adopted an enhanced protection regime. Parties to the Protocol have the right to put under enhanced protection the part of their cultural heritage which is "of the greatest importance for humanity," provided that such heritage meets two additional requirements:

(i) It is protected by national legal and administrative measures which acknowledge the exceptional cultural, historic value of such property; and,

(ii) It is not used for military purposes or as covers for military sites.[113]

*c. Distinctive Emblem*

In order to easily identify cultural property during an armed conflict, the Convention provides that such buildings may bear a distinctive emblem that appears in the form of shield.[114] The emblem, repeated three times in the form of a triangle, can be used only in specific instances, such as being placed on immovable cultural property under special protection or to transport cultural property.[115]

*d. Military Necessity*

Protection of cultural property is not absolute, but is subject to the exception of military necessity.[116] The other party to the conflict may use such an exception as a defense if the

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[110] Information provided to the author by officials of the Cyprus government, Mar. 2009. With regard to the competence of the occupying power to submit such an application, *see* art. 13, para. 2 of the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, *supra* note 109.

[111] 1954 Hague Convention, *supra* note 67, art. 9.

[112] International Committee for the Red Cross (ICRC), Introduction to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, *available at* http://www.icrc.org/ihl.nsf/INTRO/590.

[113] 1999 Protocol, *supra* note 99, art. 10.

[114] 1954 Hague Convention, *supra* note 67, arts. 6, 16. The emblem was affixed to the Cyprus Museum until 1975. Also, as required by UNESCO, World Heritage Sites are marked as such. Information provided to the author by officials of the Cyprus government, Mar. 2009.

[115] 1954 Hague Convention, *supra* note 67, art. 17.

[116] The long established international humanitarian law doctrine of military necessity is included in a number of instruments dealing with armed confli cts. *See* 1954 Hague Convention, *supra* note 67; 1999 Protocol, *supra* note 99; Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85;

cultural property in question is being used for military purposes. The 1954 Hague Protocol to the 1954 Hague Convention defines "military objectives," with regards to objects that because of their location, nature, purpose, or use can make "an effective contribution to military action and whose total or partial destruction, capture or neutralization ... offers a definite military advantage."

The concept of military necessity presents challenges for the protection of cultural property.[117] As is widely recognized, this doctrine does not give unfettered power to national forces involved in armed conflict, but its scope is limited to those instances where a particular objective is sought. The Convention provides that general protection can be waived in instances "where military necessity imperatively requires such a waiver."[118] On the other hand, special protection of cultural property can be withdrawn in exceptional instances "of unavoidable military necessity," and "only for such time as that necessity continues."[119] The Convention's lack of definition of "military necessity" and lack of clarity of the provisions pertinent to military necessity were remedied by the 1999 Protocol to the 1954 Convention. Article 6 of the Protocol spells out the rules regarding the instances in which a waiver on the basis of imperative military necessity can be invoked. Article 13 contains the rules on the loss of enhanced protection.[120]

*e. Prosecution of Individuals*

Turkey and Cyprus as State parties to the Convention are required to adopt domestic criminal laws to prosecute and to impose criminal or disciplinary sanctions against individuals, irrespective of nationality, who either commit or order to engage in violations of the 1954 Hague Convention.[121]

3. Protocol I to the Geneva Conventions[122]

One of the fundamental principles of warfare, which also governs cultural property, is that attacks shall be limited strictly to military objectives and that civilian objects shall not be

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Convention (III) relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 287; and 1977 Geneva Protocol I, *supra* note 72, *all available at* http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_ihl_treaties_and_customary_law?OpenDocument.

[117] During the review process of the Hague Convention beginning in 1993, in the aftermath of the cultural destruction of property in the former Yugoslavia, the notion of military necessity was extensively debated. In the 1998 meeting, the UNESCO Secretariat drafted a definition of military necessity which was partially followed when the 1999 Protocol to the 1954 Hague Convention was adopted. *See* Jan Hladík, *The Review of the 1954 Convention and the Adoption of the Second Protocol Thereto*, No. 835 INT'L REV. OF THE RED CROSS 621-635 (Sept. 30, 1999), *available at* http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JQ39.

[118] 1954 Hague Convention, *supra* note 67, art. 4, para. 2.

[119] *Id.* art. 11, para. 2.

[120] *See* 1999 Protocol, *supra* note 99, arts. 6, 13, *available at* http://www.icrc.org/ihl.nsf/FULL/590?OpenDocument.

[121] 1954 Hague Convention, *supra* note 67, art. 28.

[122] 1977 Geneva Protocol I, *supra* note 72.

subject to attack or reprisal.[123] As stated previously, Protocol I, adopted in 1977, defines a military objective as one which can make an effective contribution to military action and whose destruction or damage constitutes a definite military advantage.[124] If there is doubt as to whether a place of worship, a house, or other dwelling is used to make an effective contribution to warfare, then "it shall be presumed not to be [so] used."[125]

In addition to the general principles stated above, Protocol I in effect incorporates the 1954 Hague Convention, by virtue of Article 53. This Article contains specific provisions dedicated to the protection of cultural objects and places of worship.[126] Thus, it prohibits the following acts:

- Acts of hostility directed against historic monuments, or places of worship which constitute the cultural or spiritual heritage of peoples;
- The use of such objects to support any military effort; and,
- To render historic monuments or places of worship as the object of reprisals.[127]

## B. Protection of Cultural Property During Occupation

### 1. The Northern Part of Cyprus as "Occupied Territory"

In general, the law on occupation is based on a number of international legal instruments and customary norms. Article 42 of the 1907 Hague Regulations[128] Respecting the Laws and Customs of War on Land, which reflects customary international law,[129] defines a territory as occupied, "when it is actually placed under the authority of the hostile army" where "the

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[123] *Id.* art. 52, para. 1.

[124] *Id.* paras. 1, 2.

[125] *Id.* art. 52, para. 3.

[126] *Id.* (generally). Moreover, Article 16 of the 1977 Geneva Protocol II also prohibits the commission of any acts of hostility directed against works of art, historic monuments, or places of worship which are part of the cultural or spiritual heritage of peoples. 1977 Geneva Protocol II, *supra* note 72, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 456; *also available at* http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c39 71bcff1c10c125641e0052b545.

[127] 1977 Geneva Protocol I, *supra* note 72, art. 53, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 55; *see also* 1977 Geneva Protocol II, *supra* note 72, art. 16 (reflecting similar language, which applies in a non-international armed conflict), *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 436.

[128] The Regulations are annexed to the 1907 Hague Convention IV. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631, *available at* http://www.icrc.org/ihl.nsf/INTRO/195?OpenDocument.

[129] *See, e.g.,* Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 167, para. 78 (July 9, 2004), *available at* http://www.icj-cij.org/docket/files/131/1671.pdf?PHPSESSID= e3b65f0e5ef1d3d55455aa9e5ef80d24.

occupation extends only to the territory where such authority has been established and can be exercised."[130]

Central to the analysis of this issue, is the case law of two leading courts: the International Court of Justice (ICJ) and the European Court of Human Rights (ECHR).

In its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,[131] the ICJ examined the issue of whether Israel has the status of an occupying power in the West Bank. The Court did not elaborate on whether Israeli armed attacks were justified under conventional and customary international law in order to determine whether Israel was in fact an occupying power. The Court, upon articulating the definition of occupation as enunciated in Article 42 of the 1907 Hague Regulations, considered various UN Security Council Resolutions, which characterized the territory as occupied by Israel. It further stated that "under customary international law ... territory is considered occupied when it is actually placed under the authority of a hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised."[132] The Court reached the conclusion that, based on customary international law, the Palestinian territories which Israel occupied in 1967 are still occupied and consequently, "Israel had the status of occupying Power."[133]

Moreover, in 2005, the ICJ issued its final judgment in the *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*.[134] In examining whether the military forces of a state are present on the territory of another state because of military intervention, and thus qualifies as an occupying power under the rule of belligerent occupation in international humanitarian law, the Court stated that it must examine whether there is "sufficient evidence to demonstrate that the said authority was in fact established and exercised ... in the areas in question." The ICJ cited its 2004 advisory opinion on the Israeli barrier case, and reached the conclusion that the Ugandan armed forces had substituted their own authority for that of the Government of Congo; it also stated that any grounds used by Uganda to justify its occupation are irrelevant to the issue.[135]

With regard to the northern part of Cyprus, both the United Nations Security Council and the General Assembly have adopted resolutions that, either in the preamble or in the operative part, contain language to the effect that the northern part of Cyprus is under foreign occupation

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[130] 1907 Hague Regulations, art. 42, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 57.

[131] I.C.J. Advisory Opinion, *supra* note 129.

[132] *Id.* para. 78.

[133] *Id.*

[134] Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), 2005 ICJ (Dec. 19, 2005), *available at* http://www.icj-cij.org/docket/files/116/10455.pdf. For a commentary on the case, *see also*, Margaret E. McGuinness, *Case Concerning Armed Activities on the Territory of Congo: The ICJ Finds Uganda Acted Unlawfully and Orders Reparations*, 1 ASIL INSIGHTS 10, (Jan. 9, 2006), *available at* http://www.asil.org/insights060109.cfm.

[135] Case Concerning Armed Activities on the Territory of the Congo paras. 167-180 (discussing belligerent occupation).

and also urge the international community to respect the sovereignty, independence, and territorial integrity of Cyprus. Resolution 37/253 of the General Assembly, adopted in May 1983, deplored "the fact that part of the territory of the Republic of Cyprus is still occupied by foreign forces" and demanded "the immediate withdrawal of all occupation forces from the Republic of Cyprus." Both UN bodies have further stated that the international community must refrain from taking any action that might prejudice the sovereignty and independence of Cyprus, and also refrain from any action that might lead to the partition of the island.[136]

The court system of the Council of Europe has taken a clear stand on this issue as well. Specifically, the European Commission of Human Rights[137] deemed that the northern part of Cyprus was indeed under the control of Turkey when it accepted the 1977 application of *Cyprus v. Turkey*, claiming a violation of various human rights in Cyprus.[138] Moreover, the ECHR has in effect also confirmed that the northern part of Cyprus is under Turkish occupation.[139] The ECHR based its reasoning on the presence of a large number of troops engaged in active duty in the northern part of Cyprus and held that the Turkish army indeed exercises "effective control over that part of the island."[140]

The question of applicability of the law on occupation depends primarily on whether in fact the territory has been placed under the authority of a hostile army.[141] The United States Army training manuals also rely upon this fact to determine whether or not an actual occupation

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[136] *See* S.C. Res. 365, U.N. Doc. S/RES/365 (Dec. 13, 1974), *available at* http://www.un.int/cyprus/scr365.htm. In this Resolution, the Security Council endorsed Resolution 3212 (XXIX) of the General Assembly on the "Question of Cyprus" and urged the parties to implement it immediately. A subsequent Security Council Resolution 367 adopted in 1975 endorsed Resolution 365 of the Security Council and 3212 of the General Assembly. S.C. Res. 367, U.N. Doc. S/RES/367 (Mar. 12, 1975), *available at* http://www.un.int/cyprus/scr367.htm. In Resolution 3212, the General Assembly called on all states to respect the sovereignty, independence, and territorial integrity of the Republic of Cyprus and urged the "speedy withdrawal" of all foreign armed forces and foreign military presence and personnel from Cyprus. G.A. Res. 3212 (XXIX), (Nov. 1, 1974), *available at* http://www.un.int/cyprus/Res3212GA.htm.

[137] Until Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, came into force in 1998, the court system of the Council of Europe included the European Commission of Human Rights, the Court of Human Rights, and the Committee of Ministers. The role of the European Commission was to determine the admissibility of a complaint. Protocol 11 terminated the Commission and established a single, full-time court. Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, May 11, 1994, *available at* http://conventions.coe.int/treaty/EN/Treaties/html/155.htm.

[138] Cyprus v. Turkey, IV Rep. Jud. & Dec. 5, 101 (2001), *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=22&portal=hbkm&action=html&highlight=cyprus%20%7C%20v.%20%7C%20Turkey&sessionid=21069458&skin=hudoc-en.

[139] *See* Loizidou v. Turkey (Merits), para. 56, Eur. Ct. Hum. H.R., VI Dec. & Rep. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=9256208&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=588&highlight=, discussed *infra*.

[140] *Id.*

[141] Mustafa Mari, The Israeli Disengagement from the Gaza Strip: An End of the Occupation? 8 Y.B. Int'l Humanitarian L. 356, 361 (2005).

exists.[142] Thus, it is irrelevant as to whether or not the use of force that led to the occupation of a territory met the test of legality, as the International Committee of Red Cross (ICRC) asserts. The latter, in affirming the applicability of international humanitarian law in situations where the requirements of occupation are fulfilled, clarified that it applies "regardless of the reason and motives that lead to the occupation (e.g. stated intention to 'liberate' the people of a country) and regardless of its legality under international law."[143]

As previously stated, Turkey in its initial military invasion of July 20, 1974, gained control of over two percent of Cyprus' territory. In the subsequent military attack of August 14, 1974, Turkish military forces gained control and occupied 36.02 percent of the territory of Cyprus. Currently, there are 43,000 Turkish troops and close to 160,000 settlers that Turkey brought to Cyprus from mainland Turkey.[144] Moreover, the "TRNC" is under the direct control of Turkey. These facts clearly suggest that the northern part of Cyprus meets the criteria of military occupation.

A number of international law experts also assert that the northern part of Cyprus is under military occupation. For instance, Ian Brownlie, a well-known expert in international law, states that the northern part of Cyprus is "under the military occupation of Turkey dating back to the Turkish invasion of Cyprus in 1974."[145] Eyal Benvenisti, an authority on the law of occupation, briefly examines the case of the northern part of Cyprus in the context of analyzing several cases of contemporary occupations, and states that the Turkish invasion resulted in having "the Turks with control of the northern third of the island."[146] He refers to the ties between the north and mainland Turkey, including its dependence on the military presence of the Turkish army and its dependence on Turkey's economy, to suggest that the northern part of Cyprus is indeed under the effective control of the Turkish army.[147] He also attributes the lack of recognition of the "TRNC" to the continuing dependency on Turkey, "whose presence there was deemed the fruit of illegal aggression."[148]

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[142] U.S. Dep't of Army Pam. 27-161-2, 2 INT'L LAW 159 (1962), *cited in* Jordan J. Paust, *The U.S. as Occupying Power over Portions of Iraq and Relevant Responsibilities Under the Laws of War*, ASIL INSIGHTS (Apr. 2003), http://www.asil.org/ insigh102.cfm.

[143] ICRC, *Occupied Territory – The Legal Issues*, http://www.icrc.org/Web/Eng/siteeng 0.nsf/htmlall/ section_ihl_occupied_territory?OpenDocument.

[144] Ministry of Foreign Affairs of the Republic of Cyprus, *Illegal Demographic Changes*, http://www.mfa. gov.cy/mfa /mfa2006.nsf/cyprus06_en/cyprus06_en?OpenDocument; *see also* Ministry of Foreign Affairs Circular, Sept. 19, 2007 (addressed to diplomatic missions).

[145] Ian Brownlie, *Recognition in Theory and Practice*, 53 BRITISH Y.B. INT'L L. (1982) 203, *cited in* CHRYSOSTOMIDES, *supra* note 1, at 144.

[146] EYAL BENVENISTI, INTERNATIONAL LAW OF OCCUPATION 178 (2004).

[147] *Id.*

[148] *Id.* at 180.

2. International Rules on Protection of Cultural Property Applicable to the Occupied Territory of Cyprus

Having established that the northern part of Cyprus meets the legal requirements to be defined as an occupied territory under international law, the following legal instruments apply to the protection of cultural property and the responsibilities that arise for the occupying power.

*a. The 1954 Hague Convention*

The 1954 Hague Convention establishes that it shall be applicable "to all cases of partial or total occupation of the territory of a high contracting party, even if the occupation meets with no armed resistance."

Article 5 of the Convention addresses issues of protection of cultural property located in occupied territory. Under Article 5, paragraph 1, a contracting party in occupation of whole or part of the territory of another contracting party is required, to the extent possible, to support the "competent national authorities of the occupied country in safeguarding and preserving its cultural property." Paragraph 2 of the same Article provides:

> Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close cooperation with such authorities, take the most necessary measures of preservation.[149]

The language of both paragraphs read together indicates that the occupied national authorities are primarily responsible for taking any necessary steps to protect and preserve their cultural property. Only if the said authorities are unable to do so, as in case of Cyprus where there is a dividing line between the north and south, then the "TRNC" authorities, in cooperation with the government of Cyprus, are obliged to take measures limited to preservation activities. In fact, no such cooperation has taken place. The "TRNC" is involved in archaeological activities on its own.

*b. The 1954 Hague Protocol for the Protection of Cultural Property During Armed Conflict*

The 1954 Hague Protocol for the Protection of Cultural Property During Armed Conflict was ratified by Turkey on December 15, 1965. The Protocol requires Turkey to:

a) Take measures to prevent the exportation of cultural property from the occupied northern part of Cyprus;[150]

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[149] 1954 Hague Convention, *supra* note 67, art. 5.

[150] O'KEEFE, *supra* note 71, at 260. O'Keefe comments that during the review stage of the 1954 Hague Convention, many participants expressed the opinion that due to the occurrence of several cases of illegal exportation of cultural property, a ban on excavations in occupied territories was essential and that such a ban ought

b) Take into its custody any cultural property that comes from the occupied territory and is imported into its territory;

c) Return any illegally exported property at the close of hostilities; and,

d) Pay damages to any good-faith holder of such property that must be returned to its rightful owners.[151]

The third requirement to "return any illegally exported property at the close of hostilities" poses a particular problem in the Cyprus case because the language used presupposes that the hostilities and the end of occupation of the territory where the cultural property was taken would occur at the same time. O'Keefe, an international law authority on cultural issues, comments that:

> this poses a conundrum in situations such as Cyprus, where, no legal state of war existing between the hostile Parties, it can be said that hostilities, in the sense of combat operations, have come to a close, but where occupation of part of the territory persists and has persisted for over thirty years. In such cases, unless the Party subject to the duty laid down in paragraph 3 is to retain custody over cultural property exported from the occupied territory until a final settlement is reached, which may be ad infinitum, it would seem in keeping with the object and purpose of the provision to return the property to the government of the unoccupied part of the territory. But paragraph 3 would not mandate this.[152]

The obligation to prevent exportation is not limited to the occupation authorities, but has a broader reach and includes the duty to prevent private parties from engaging in exportation. The obligation is also not limited to exportation that is illegal according to the domestic law of the party concerned, but it extends to all exportation of cultural property.[153] Patrick Boylan, another leading authority on the protection of cultural property during armed conflict, in reviewing the application of the 1954 Hague Convention in 1993, comments that the above provisions have been proven ineffective in a number of cases.[154] He cites a number of examples, including Indo-China in the 1960s and 1970s, the Iran-Iraq war of the 1980s, and "the leakage" of archaeological material, antiquities, and works of art from the occupied northern part of Cyprus.[155]

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to be included in a subsequent protocol. Several cases of illicit export were mentioned, including the plunder of Kuwait by Iraqi forces, the pillage of Angkor during the occupation of Cambodia by Vietnam, and "less explicitly but no less seriously, of the continuing theft of cultural property from Turkish occupied northern Cyprus." *Id.*

[151] 1954 Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, art. 1, 249 U.N.T.S. 358-64, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 363.

[152] O'KEEFE, *supra* note 71, at 199.

[153] *Id.* at 198.

[154] BOYLAN, *supra* note 78, at 95, 96.

[155] *Id.*

*c. 1999 Second Hague Protocol*

The Second Hague Protocol, which has not been ratified by Turkey, in its Article 9(1)(a) requires an occupying power to prohibit and prevent any illicit export, other removal, and transfer of ownership of cultural property from the occupied territory. O'Keefe asserts that the use of "cultural property" encompasses not only movables which in effect (or actually) can be removed and exported to a foreign country, but also immovables, such as buildings and archaeological sites.[156] Therefore, the examples of churches that have been rented or sold to private individuals, as stated previously, are in direct violation of this rule.

*d. Protocol I Additional to the 1949 Geneva Conventions*

The occupying power is bound during the duration of the occupation, to the extent that it functions as a government, by Article 53 of the Protocol. This Article prohibits the destruction of real or personal private belonging to individuals or to the state or other public authorities, except where such destruction is deemed absolutely necessary by military operations.[157]

*e. Paragraph V of the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage*

The 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage is also relevant to the analysis of instruments pertaining to the protection of cultural property in the northern part of Cyprus. Paragraph V of the Declaration provides that parties involved in an armed conflict, including occupation, must take any measures necessary to conduct their activities in such a way as to ensure the safety and integrity of the cultural property, in accordance with customary international law and the standards enunciated in international agreements on cultural property.[158]

*f. Archaeological Excavations and the 1999 Protocol to the 1954 Hague Convention*

As previously noted, the Republic of Cyprus is raising the issue of the excavations that are reported to take place in the northern part of Cyprus and argues that such excavations are illegal.

Article 5 of the 1954 Hague Convention dealing with occupation does not expressly prohibit the occupying powers from engaging in excavations; nevertheless, the pertinent

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[156] O'KEEFE, *supra* note 71, at 260.

[157] 1977 Geneva Protocol I, *supra* note 72, art. 53. Article 16 of Geneva Protocol II, *supra* note 72, also prohibits the commission of any acts of hostility which are directed against works of art, historic monuments, or places of worship which are part of the cultural or spiritual heritage of peoples.

[158] UNESCO, Legal Instruments, UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, Oct. 17, 2003, *available at* http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html.

language of Article 5 clearly indicates that the occupying powers must cooperate with the national competent authorities in instances where cultural property is endangered and needs to be preserved. Israel, a state involved in archaeological excavations in occupied territories, claims that the lack of explicit prohibition in the 1954 Convention renders such excavations by the occupying forces permissible under international law.[159] However, even though Article 5 of the 1954 Hague Convention does not expressly include such a ban, the prevailing view is that a prohibition is implied from the overall language and spirit of Article 5 and the 1954 Convention.[160] Along the same lines, it has also been suggested that Article 5 is deemed to be based on the principle that any excavations on occupied territory fall within the domain of the national competent authorities.[161]

The apparent lacuna in the text of the Convention regarding archaeological excavations has been remedied through the adoption of the 1999 Protocol to the 1954 Hague Convention. The Protocol spelled out the rules on excavations. Under Article 9, authorities that occupy part or a whole of the territory of another party are prohibited from engaging in archaeological excavations, except in cases where such excavations are essential to safeguard, record, or preserve cultural property, and from altering or changing the use of cultural property in a manner intended to cover or destroy cultural, historical, or scientific evidence.[162]

The "TRNC," by using as a defense the exception that excavations are allowed when they "are essential to safeguard, record or preserve cultural property," argues that such excavations are critical because the cultural heritage of the northern part of Cyprus is endangered and on the brink of disappearance, "because of accelerated deterioration"; furthermore, it argues that excavations occur within its "sovereign territory."[163] However, it must be pointed out that the "TRNC" lacks international standing and therefore is not a party to the Protocol; moreover, it engages in archaeological activities on Turkey's behalf. On the other hand, Turkey has not ratified this Protocol; thus arguably it cannot base its defense on a legal document that does not entail legal effects for Turkey.

Article 9 clarifies that any archaeological excavations, alterations, or changes of use of cultural property "shall be carried out in close co-operation with the competent national authorities of the occupied territory." An exception exists when the circumstances do not permit

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[159] N. Sliman, *The Protection of Cultural Property in Occupied East Jerusalem: Archaeological Excavations and Removal of Cultural Property*, *in* XXXV MULTICULTURALISM AND INTERNATIONAL LAW 350 (Kalliopi Koufa, ed., Inst. of Int'l Pub. Law and Int'l Relations of Thessaloniki, 2007).

[160] *See also* Recommendation on International Principles Applicable to Archaeological Excavations, adopted by UNESCO in 1956, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13062&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[161] O'KEEFE, *supra* note 71, at 139.

[162] 1999 Protocol, *supra* note 99, art. 9, para. 1(b), *available at* http://www.icrc.org/ihl.nsf/FULL/590?OpenDocument.

[163] *See* Kaya Arslan, Position Paper (I) Regarding the Archaeological Excavation at Kaleburnu, in the Karpas Peninsula in North Cyprus, *available at* http://cpc.emu.edu.tr/articles/POSITION%20PAPER%20-I%20Regarding%20the%20archeological%20excavation%20at%20Kaleburnu,in%20the%20Karpas%20peninsula%20in%20North%20Cyprus%20-%20Kaya%20Arslan.pdf (last visited Mar. 4, 2009).

such close cooperation between occupation authorities and national competent authorities.[164] "TRNC" has not requested that the government of Cyprus be involved and cooperate in preservation efforts in the occupied area. In March 2008, and within the framework of renewed efforts to reach a settlement to the Cyprus issue, a Technical Committee composed of members of the two communities, Greek Cypriots, and Turkish Cypriots, was established to work jointly on restoration and preservation issues.[165]

### C. Standards for the Elimination of Religious Intolerance[166]

Resolution 55/254 on Protection of Religious Sites, adopted by the United Nations General Assembly, condemns acts of destruction, damage, or endangerment against religious sites and calls upon states to ensure that religious sites are protected and safeguarded.[167] The Resolution of the Commission on Human Rights 2003/54 on Elimination of all Forms of Religious Intolerance urges states to take measures pursuant to their national legislation and international human rights standards, "to ensure that religious places, sites and shrines are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction."[168]

The above standards concern state action against religious sites but arguably they are also relevant in case of actions which could be attributed to unrecognized *de facto* regimes, such as the "TRNC."[169]

## VII. Accountability for Violations of International Laws for the Protection of Cultural Property

The international instruments referenced above contain specific rules regarding state responsibility and individual responsibility of those who engage in acts to destroy cultural property or order others to commit such acts. Several international criminal tribunals have prosecuted and found guilty those who have engaged in the destruction of cultural property, including the 1946 Nuremberg Tribunal. Moreover, a number of rules regarding protection of cultural property during armed conflict and occupation have achieved the status of customary international law.

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[164] 1999 Protocol, *supra* note 99, art. 9, para. 2.

[165] Information provided to the author by officials of the Cyprus government, Mar. 2009.

[166] For an additional discussion of this topic, *see* Yael Romen, *The Demolition of Synagogues in the Gaza Strip,* ASIL INSIGHTS (Oct. 17, 2005), http://www.asil.org/insights051017.cfm.

[167] Protection of Religious Sites, G.A. Res. 55/254, para. 2, U.N. Doc. A/RES/55/254 (May 31, 2001), *available at* http://www.un-documents.net/a55r254.htm. Even though this resolution was adopted in the aftermath of the destruction of the Bamiyan Buddhas in Afghanistan, it is nevertheless an influential instrument since it expresses the views of the international community.

[168] Elimination of all Forms of Religious Intolerance, U.N. Commission on Human Rights Res. 2003/54, para. 4(e) (Apr. 24, 2003), *available at* http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.54.En?Opendocument.

[169] *Id.*

### A. Responsibility Under Conventional International Law

A recognized principle of international law is that a state is internationally responsible for an internationally wrongful act, which may consist of either an action or omission and which is a) attributable to the state under international law; and b) constitutes a violation of an international obligation of the state.[170] A wrongful act is considered to have a continuing character if it extends during the entire period during which the causal conduct of a state continues and remains contrary to an international obligation during that period.[171]

#### 1. 1954 Hague Convention and Protocols

Article 28 of the 1954 Hague Convention requires states to enact criminal rules in order to prosecute and impose criminal or disciplinary sanctions against persons, irrespective of nationality, who either commit or order others to commit actions in violation of the provisions of the Convention.[172] This provision has been criticized for its lack of specificity as to the list of crimes and procedural aspects of sanctions.[173] The 1999 Protocol to the 1954 Convention remedies the shortcoming of Article 28 by including in its Article 15 a list of concrete offenses that must be incorporated into the criminal and/or military legislation of state parties.[174] These offenses include:

- Attacking cultural property that is granted enhanced protection;
- Using cultural property under enhanced protection or its immediate surroundings to support military action;
- Extensive destruction or appropriation of cultural property under both documents;
- Attacking cultural property protected under both documents; and
- Thefts, pillage, misappropriation of, or acts of vandalism against cultural property protected under the Convention.

Parties to the 1954 Hague Convention and its 1999 Protocol are required to establish jurisdiction based on the nationality and territoriality principle. They are also obliged to

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[170] *See* Draft Articles on State Responsibility adopted by the International Law Commission in 2001 and submitted to the U.N. General Assembly, II YEARBOOK OF THE INTERNATIONAL LAW COMMISSION: 2001 (Part II). On December 12, 2001, the General Assembly of the United Nations adopted Resolution 56/83, entitled Responsibility of States for Internationally Wrongful Acts, and incorporated in its Annex the text of the Draft Articles. G.A. Res. 56/83, *available at* http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

[171] G.A. Res. 56/83, art. 14, para. 2.

[172] DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 348.

[173] *See* Ian Hladik, *Protection of Cultural Property: The Legal Aspects*, *in* 80 ISSUES IN INT'L L. & MIL. OPERATIONS 326 (Richard B. Jaques, ed., Naval War College, 2006).

[174] The 1999 Protocol also deals with other issues associated with criminal responsibility, including extradition and mutual legal assistance. 1999 Protocol, *supra* note 99.

establish universal jurisdiction with regard to the first three offenses.[175] The 1999 Protocol does not preclude the possibility of individual criminal responsibility or the exercise of jurisdiction under national, international, or customary law.[176] However, the Protocol also includes a special provision for those states that are not parties to the Protocol, such as Turkey. It appears that in such a case, members of the armed forces and nationals of Turkey would not incur individual criminal responsibility by virtue of this Protocol, nor would Turkey be obliged to establish jurisdiction over such persons, or extradite them, unless Turkey accepts and applies this Protocol.[177]

To ensure implementation of its provisions, the 1999 Protocol established the Committee for the Protection of Cultural Property in the Event of Armed Conflict.[178] This Committee is also responsible for issuing, suspending or canceling the granting of enhanced protection, and for allocating funds for the protection of cultural property, as provided for in Article 29.[179]

Principles of state and individual responsibility are also included in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage.. The Declaration defines intentional destruction as "an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity...."[180] It also states that anyone who intentionally destroys or fails to take the necessary steps to prohibit, prevent, put an end to, and punish intentional actions to destroy cultural heritage is responsible for such destruction.[181] A state bears responsibility irrespective of whether such property is in the UNESCO list of cultural property. States are also responsible for establishing jurisdiction over those individuals who either themselves engage in the destruction of cultural property or order others to commit such acts.[182]

2. Whether Responsibility Can Be Attributed to Turkey and/or the "TRNC"

In general, Turkey, as a party to the 1954 Hague Convention and to the 1954 Protocol, is bound by their provisions, specifically by Article 4 of the Convention related to respect of cultural property during armed conflict and Article 5 of the Convention, which applies in cases of occupation. As stated initially, a plethora of churches have been permanently converted into commercial offices, private museums, or stores, or have been subject to vandalism. On the other hand, the "TRNC" is a self-proclaimed entity, which remains unrecognized by the international

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[175] *Id.* art. 16, para. 1.

[176] *Id.* para. 2(a).

[177] *Id.* para. 2(b).

[178] *Id.* art. 24.

[179] *Id.* art. 27.

[180] UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, *supra* note 158.

[181] *Id.* para. VI.

[182] *Id.* para. VII.

community.[183] The "TRNC" has been sustained from 1983 until the present through Turkey's financial, military, and political support. The legal status of the "TRNC" was dealt with by the ECHR in the *Loizidou* case and was defined therein as "a subordinate local administration."[184]

The case law discussed below, from a U.S. court and the ECHR, reflects the judicial approach on issues of stolen cultural property from the northern part of Cyprus, non-recognition of the "TRNC," and attribution of responsibility for violations of the European Convention on Human Rights and Fundamental Freedoms to Turkey, rather than to the "TRNC."

The case of *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*[185] is of particular significance. In this case, the Autocephalous Greek-Orthodox Church of Cyprus filed a replevin action in a District Court in the U.S. State of Indiana, and successfully recovered the Byzantine mosaics that were stolen from the Church of Kanakaria

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[183] For an analysis of the recognition and its effects, *see* THOMAS D. GRANT, THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION (1999); *see also* STEFAN TALMON, KOLLEKTIVE NICHTANERKENNUNG ILLEGALER STAATEN : GRUNDLAGEN UND RECHTSFOLGEN EINER INTERNATIONAL KOORDINIERTEN SANKTION, DARGESTELLT AM BEISPIEL DER TÜRKISCHEN REPUBLIK NORD-ZYPERN [COLLECTIVE NON-RECOGNITION OF ILLEGAL STATES: LEGAL FOUNDATIONS AND CONSEQUENCES OF AN INTERNATIONALLY COORDINATED SANCTION WITH PARTICULAR REFERENCE TO THE TURKISH REPUBLIC OF CYPRUS] (2006) (arguing that the reason for the collective non-recognition of "TRNC" is the fact that it is founded in violation of international law).

[184] Loizidou v. Turkey (Merits), Eur. Ct. Hum. H.R., VI Dec. & Rep. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=9256208&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=588&highlight=. The judgment in Loizidou v. Turkey was upheld in 2001, in Cyprus v. Turkey, *supra* note 138.

In 2004, the "effective control" test was upheld in the judgment of Ilaşcu and Others v. Moldova and Russia, Eur. Ct. Hum. H.R., VII Dec. & Rep. 262 (2004) *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ilascu%20%7C%20v.%20%7C%20Moldova&sessionid=21070174&skin=hudoc-en.

It may also be possible under international law for a *de facto* regime such as the "TRNC" to incur responsibility for damage to cultural property. Under international criminal law, individuals can be held criminally responsible for actions that constitute international crimes. *See* Andrew Clapham, *Human Rights Obligations of Non-State Actors in Conflict Situations*, 88 INT'L REV. RED CROSS No. 863 (Sept. 2006).

[185] Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc., 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd* 917 F.2d 278 (7th Cir. 1990). In this landmark case, the Autocephalous Greek-Orthodox Church of Cyprus, (one of the oldest autocephalous churches of the Eastern Orthodox religion, first established in the Third Ecumenical Council of Ephesus (431 A.D.) and reaffirmed by the Council in Trullo (692 A.D.), and which, according to Article 110 of the 1960 Cyprus Constitution, has the exclusive right to administer its own affairs and property according to the Holy Canons and its Charter, brought a civil action to repatriate Byzantine mosaics that had been stolen in 1976 from the Kanakaria church. The Kanakaria church had been completely vandalized and was used as a stable for farm animals. Prior to the 1974 events, the Church of Cyprus had registered both the church and itself as the lawful owner of the Kanakaria church, in the Land registry of Cyprus. It is worth noting that the Defendant Goldberg claimed that the various decrees, such as the Abandoned Movable Property Law issued by the "Turkish Federal State of Cyprus" ("FSC"), the predecessor of the "TRNC", had divested the Church of Cyprus from its title to the Kanakaria church and the mosaics thereof, which belonged to the "FSC" Kanakaria. *Id.*

situated in the northern part of Cyprus. The Court held that the defendant never acquired good title or the right to possess the mosaics.[186]

The Court of Appeals affirmed.[187] The concurring judge, Judge Cudahy, referred to the 1954 Hague Convention on the Protection of Armed Conflict and to the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Transport, Export and Transfer of Ownership of Cultural Property, and opined that under both Conventions, the mosaics would qualify as cultural property to be internationally protected.[188] He continued that the 1954 Hague Convention which prohibits the destruction of cultural property or the seizure during an armed conflict and occupation could be applicable in the Kanakaria case, and that Turkish military attempts to divest the Church of Cyprus of ownership of mosaics "might be viewed as an interference of the sort contemplated by the 1954 Convention."[189] The judge also stated that the 1970 UNESCO Convention, which deals with private conduct during peace time, "is also applicable to the theft and removal of the mosaics from Cyprus."[190]

Attribution of responsibility has also been examined in several cases by the ECHR. Even though the judgments rendered by the ECHR did not involve cultural property *per se* but deprivation of private property of Greek Cypriots who lost their properties in the northern part of Cyprus, it can be argued that the legal reasoning and key findings of the judgments can be also applied *mutatis mutandis* to the destruction of cultural property. In the landmark case of *Loizidou v. Turkey*, the ECHR found Turkey to be responsible for the violation of the applicant's claim to property, pursuant to Article 1 of Protocol I,[191] and stated, "responsibility of a Contracting Party could also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its territory ... whether it be exercised directly, through its armed forces, or through a subordinate local administration[.]"[192]

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[186] *Id.* at 1399. The issue of transfer of title of a stolen object is handled differently in civil law countries than in common law countries. In some civil law countries, a thief can transfer title to a good-faith buyer after the passage of some time, and in other countries immediately. For a discussion of such issues, including the Kanakaria case, *see* PATTY GERSTENBLITH, ART, CULTURAL HERITAGE AND THE LAW: CASES AND MATERIALS 427 (2004).

[187] Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Arts, Inc., 917 F.2d 278 (7th Cir. 1990).

[188] *Id.* at 295.

[189] *Id.* at 296.

[190] *Id.*

[191] Loizidou v. Turkey (Merits and Just Satisfaction), Eur. Ct. H.R., IV Rep. & Dec. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=loizidou%20%7C%20v.%20%7C%20turkey&sessionid=21108946&skin=hudoc-en. The Court, in its subsequent decision on the issue of "just and equitable" satisfaction under Article 50 of the Convention, awarded monetary damages for the loss of the use of the property by the applicant, non-financial damages for the loss of enjoyment of her property, and costs and interest with an annual rate of eight percent. Loizidou v. Turkey (Just Satisfaction), Eur. Ct. H.R., IV Rep. & Dec. (1998), *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=loizidou%20%7C%20v.%20%7C%20turkey&sessionid=21108946&skin=hudoc-en.

[192] Loizidou v. Turkey (Merits and Just Satisfaction), para. 52.

Drawing an inference from the fact that a large number of Turkish troops are stationed and operate in the northern part of Cyprus, the Court held:

> it is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the TRNC.[193]

The Court continued: "it is important that the Turkish government has acknowledged that the applicant's loss of control of her property [house] stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the TRNC."[194]

Thus, based on the effective control test applied by the ECHR, Turkey, as an occupying power, cannot evade its international obligations pertaining to cultural and religious property located in the northern part of Cyprus by establishing a subordinate local administration that has no international standing.

3. Third-Party States to the Protocol

Paragraphs 2 and 3 of the 1999 Protocol impose an obligation on third parties, who are not parties to the conflict but are parties to the Protocol. Third-party states, in this instance, are required to take any imported cultural property into their custody, when that property originates in an occupying territory and enters the territory of the third party either directly from the occupied territory or indirectly through other states.

A third party who receives such property from an occupied territory is obliged, under Article 1 of the Protocol, to "return, at the end of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory." This paragraph has been clarified to indicate that the close of hostilities and the occupation of a territory are terminated at the same time.[195] However, there are instances, such as in the case of Cyprus, where the hostilities have ended, but the northern area of Cyprus nonetheless remains under occupation. In such cases, it has been asserted that third parties that have in their custody cultural property may retain the property until the Cyprus issue is settled, which could be an indefinite period. Third parties also have an alternative, which is to return such property to the competent authorities of the Republic of Cyprus, in accordance with the spirit of the Convention. However, the same author asserts that paragraph 3 of Article 1 of the Protocol does not mandate such action by the third-party state.[196]

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[193] *Id.* para. 56

[194] *Id.* para. 54.

[195] *Id.*

[196] *Id.*

### B. Customary International Law

Customary international law can be invoked before national courts and is binding on all states irrespective of whether or not the states concerned have ratified existing international conventions governing the issue. The prohibition of actions intended to destroy cultural property during armed conflict is a fundamental customary international norm.

As stated previously, Articles 3 and 4 of the 1954 Hague Convention, pertaining to safeguarding and respecting cultural property, have achieved the status of customary international law.[197] The customary status was also affirmed by the United Nations Commission of Experts, which was appointed in 1993 to examine the grave violations of international humanitarian law in the territory of the former Yugoslavia.[198] At the judicial level, it has been confirmed by the ICTY in a judgment in the case of *Prosecutor v. Dario Kondic and Mario Cerkez,* of February 2001.[199] The Trial Chamber stated that the act of destruction and willful damage to institutions dedicated to religion has "already been criminalized under customary international law."[200] Thus, the Tribunal, citing the Nuremberg International Tribunal of 1946, held that an attack to destroy:

> ...when perpetrated with the requisite discriminatory intent, amounts to an attack on the very religious identity of a people. As such, it manifests a nearly pure expression of the notion of "crimes against humanity," for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects.[201]

In regard to individual responsibility, the Nuremberg Tribunal has held that command responsibility applies not only to persons who order others to commit war crimes or crimes against humanity, but also to superiors for acts committed by subordinates, if they had knowledge of such acts. The principle of command responsibility was incorporated into Article 28 of the 1954 Hague Convention, which requires that parties undertake to establish criminal jurisdiction to prosecute and impose criminal sanctions or disciplinary measures against those who commit or order to be committed a violation of the provisions of the Convention.

## VIII. Recovery of Illicitly Exported and Stolen Cultural Property

The destruction of cultural property includes not only the physical destruction of religious or archaeological sites but also acts of plunder, which may result in illegal exportation and

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[197] *See* Francioni and Lenzerini, *supra* note 92.

[198] BOYLAN, *supra* note 78, at 92.

[199] Prosecutor v. Dario Kordic and Mario Cerkez, Case No. IT-95-14/2-T, Trial Chamber Judgment (Feb. 26, 2001), *available at* http://www.un.org/icty/kordic/trialc/judgement/index.htm, *rev'd in part*, Prosecutor v. Dario Kordic and Mario Cerkez, Case No. IT-95-14/2-A, App. Chamber Judgment (Dec. 17, 2004), *available at* http://www.un.org/icty/kordic/appeal /judgement/cer-aj041217e.pdf. The Appeals Chamber partially reversed the Trial Chamber's decision on certain counts; however, it affirmed the Camber's decision regarding destruction or willful damage to institutions dedicated to religion, as a violation of the laws or customs of war.

[200] *Id.* para. 206.

[201] *Id.* para. 207.

sale.[202] Two international legal instruments address the problem of international trafficking in cultural property, and attempt to combat and suppress illicit traffic of cultural objects:

(i) The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;[203] and,

(ii) The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.[204]

These two Conventions share certain similar features. Both have adopted a broad definition of cultural property. The definition includes cultural objects, which, either on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science, or belong to those listed in the Annex. Both Conventions fight the illicit trade in art and cultural property and neither are retroactive, thus they apply between state parties only after their entry intro force. Under both Conventions, a victim of a stolen cultural object, be it an individual, a legal entity or a state, has the right to seek restitution.

Under the 1995 UNIDROIT (International Institute for the Unification of Private Law) Convention, a state party, an individual, or a legal entity who owned cultural objects that have been stolen may claim restitution. Cyprus has ratified the Convention, whereas Turkey has not.[205] Under the same Convention, only a state party may claim the return of illicitly exported cultural objects.[206] Other important aspects of both instruments are discussed below.

Even though customary international law on the protection of cultural property during peace time has not crystallized as much as the legal regime of protection of cultural property during armed conflict and occupation, the legal literature suggests that international rules on cultural property during peace have also achieved the status of customary international law for two reasons: (i) the large number of states ratifying the 1970 UNESCO Convention and the World Heritage Convention, which suggests acceptance by the international community; and (ii)

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[202] Hirad Abtahi, *The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia*, 14 HARVARD HUM. R. J. 15 (2001).

[203] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention), *signed* Nov. 14, 1970, *entered into force* Apr. 24, 1972, 96 Stat. 2329, 823 U.N.T.S. 231, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[204] UNIDROIT (International Institute for the Unification of Private Law) Convention on Stolen or Illegally Exported Cultural Objects (Rome, June 24, 1995), registered with the U.N. Mar. 31, 2007, No. 43718, *available at* http://www.unidroit.org/english/conventions/1995culturalproperty/main.htm.

[205] *See* List of Parties to the 1995 UNIDROIT Convention, *available at* http://www.unidroit.org/english/implement/i-95.pdf (last visited Mar. 6, 2009).

[206] *See* UNESCO Information Note, UNESCO AND UNIDROIT – COOPERATION IN THE FIGHT AGAINST ILLICIT TRAFFIC IN CULTURAL PROPERTY (Conference Celebrating the 10th Anniversary of the 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects), *available at* http://www.google.com/search?hl=en&q=UNESCO+Unidroit+cooperation+fight+&btnG=Search&lr=lang_en%7Clang_el (last visited Mar. 6, 2009).

the observation that it would be a paradox for international law to provide more protection to cultural property during armed conflict than during times of peace.[207]

### A. The 1970 UNESCO Convention

The 1970 UNESCO Convention is the basic international instrument which governs the international movement and marketing of cultural property. Both Cyprus and Turkey have ratified the Convention; hence, they became bound by its provisions three months after depositing their instrument of ratification.[208] On the other hand, as required by the Convention, the Cyprus government must proceed in its recovery and return requests through diplomatic means. The government must provide all the necessary documents and other evidence, at its own expense, to establish and substantiate its claim for the recovery and return of illicitly exported items. It must also pay any incidental expenses due to delivery and return. No customs duties can be imposed on cultural property returned in this manner.

Cyprus ratified the 1970 UNESCO Convention on October 10, 1979, and Turkey ratified it on April 21, 1981.[209] Consequently, Cyprus and Turkey, since December 10, 1979, and July 21, 1981, respectively, were required to take the following measures in their domestic legislation:

a) Introduce a certificate authorizing and accompanying the export of the particular cultural property;

b) Prohibit the export from their territory of any cultural property without the export certificate;

c) Prohibit the import of cultural property stolen from a museum or a religious monument, provided that such property is documented as belonging to the inventory of that museum or religious monument; and,

d) Prevent museums and similar institutions from acquiring cultural property which originated from another country.[210]

Article 11 governs the exportation of cultural property from occupied territory and thus affects Turkey as a result. It declares as illicit "[t]he export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power...."

Moreover, Turkey, as a state party, is required at the request of the party of origin (in this case, Cyprus) to take appropriate steps to recover and return cultural property that was illegally

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[207] A.F. Vrdoljak, *Intentional Destruction of Cultural Heritage and International Law, in* XXXV MULTICULTURALISM AND INTERNATIONAL LAW, *supra* note 159, at 386.

[208] 1970 UNESCO Convention, *supra* note 203, art. 21.

[209] *See* List of Parties to the 1970 UNESCO Convention, *available at* http://portal.unesco.org/la/convention.asp?KO=13039&language=E

[210] 1970 UNESCO Convention, *supra* note 203, arts. 6-8.

imported within its territory, and to ensure that its appropriate authorities cooperate to facilitate the restitution of the illicitly exported cultural property to its rightful owner.[211] On the other hand, if Cyprus succeeds in its recovery claims, it must pay "just compensation" to innocent purchasers or to those who hold valid title.[212]

The 1970 Convention allows state parties to enter into bilateral agreements with other states to enforce each other's laws on cultural property. Based on such agreements, wronged states are in a better position in terms of standing to enforce their cultural property laws in foreign courts against those who illegally exported cultural objects[213] and to request enforcement of their national laws. While the 1970 Convention does not set a time limit on restitution requests, such a limit may exist under the domestic laws of a state party.[214]

### B. The 1995 UNIDROIT Convention

The UNIDROIT Convention establishes two systems, one for stolen objects and the other for the return of "illegally exported objects."

#### 1. Stolen Objects

A cultural object is considered stolen when it has been unlawfully excavated or lawfully excavated but unlawfully retained.[215] The possessor of a stolen cultural object is required to return the item. Such possessors are entitled to receive a "fair and reasonable compensation" at the time they return the item. In order to receive the compensation, two conditions must be met:

(i) The possessor did not know nor ought reasonably to have known that the item was stolen; and,

(ii) The possessor must furnish proof that he/she exercised due diligence at the time of acquisition of the item.[216]

Pursuant to the Convention, Cyprus may issue a claim for restitution within a period of three years from the time Cyprus became aware of the location of the cultural object and the identity of the possessor, and in any case within a period of fifty years from the time of theft.[217] However, Turkey has neither signed nor ratified the Convention.

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[211] *Id.* art. 13.

[212] *Id.* art. 7, para. b(ii).

[213] Note, Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COL. L. REV. 377 (1995).

[214] The Cyprus Antiquities Law does not provide such a limitation. The Return of Cultural Objects Law No. 183(1) of 2002, discussed in Part IV, *supra*, establishes a limitation of 75 years for the return of cultural objects to their country of origin.

[215] 1995 UNIDROIT Convention, *supra* note 204, art. 3, para. 2.

[216] *Id.* art. 4.

[217] *Id.* art., para. 3.

2. Return of Illegally Exported Cultural Objects

In case of cultural property that was illegally exported, Cyprus may file claims either with an administrative body or with a foreign court in order to recover artifacts exported in violation of its own laws.[218] A foreign court or other competent authority of the state where the request is made must order that the object be returned. In order to prevail, Cyprus must furnish proof that the removal of the item had an adverse effect on the integrity of a complex object, or the physical preservation of the object; or that the object is of significant cultural importance.[219]

### C. Additional Conventions Ratified by Cyprus

Cyprus has ratified, *inter alia*, the following additional Conventions:

- Convention for the Safeguarding of Intangible Cultural Heritage.[220] Cyprus ratified this Convention on February 26, 2006.[221] The Convention entered into force in Cyprus on May 24, 2006. The main objective of this Convention is to safeguard and ensure respect for the intangible cultural heritage of the communities, groups, and individuals concerned.
- Convention Concerning the Protection of the World Cultural and Natural Heritage.[222] Cyprus acceded to this Convention on August, 14, 1975.[223] The Convention established the World Heritage List. This list includes three places of cultural significance that were recommended by Cyprus and are located in southern Cyprus.[224]

## IX. Judicial Remedies and Other Methods of Dispute Resolution Concerning the Destruction of Cultural Property and Illicit Trade and Transfer

The Republic of Cyprus and the Church of Cyprus have launched a campaign to reclaim lost or illegally exported cultural objects that represent their rich religious and cultural heritage. One forum that has been utilized is that of litigation before foreign courts, as the case of the

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[218] *Id.* art. 5, para. 1.

[219] *Id.* art. 5, para. 3.

[220] Convention for the Safeguarding of Intangible Cultural Heritage, Oct. 17, 2003, 2368 U.N.T.S. 3, *available at* http://www.unesco.org/culture /ich/index.php?pg=00006.

[221] UNESCO, *The State Parties to the Convention for the Safeguarding of Intangible Cultural Heritage (2003)*, http://www.unesco.org/culture/ich/index.php?pg=00024 (last visited Mar. 6, 2009). Turkey has also ratified the Convention. *Id.*

[222] Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[223] UNESCO, List of State Parties to the Convention Concerning the Protection of the World Cultural and Natural Heritage, http://portal.unesco.org/la/convention.asp?KO=13055&language=E (last visited Mar. 6, 2009).

[224] UNESCO, World Heritage List, http://whc.unesco.org/en/list (last visited Mar. 6, 2009).

Kanakaria Mosaics illustrates.[225] In addition, Cyprus has been able to repatriate a number of illegally exported antiquities, including part of a private collection that was located in European auction houses as well as a number of Byzantine icons. Specifically, in 2007, six invaluable Byzantine icons, dating back to the 13th and 14th century had been illegally exported either prior to or after the 1974 events. These items were returned to the Church of Cyprus, as the lawful owner after an agreement was reached with the Charles Pankow American Foundation in California.[226]

The 1954 Hague Convention has been criticized for lack of specific provisions to resolve conflicts pertaining to the application of the Convention and its 1954 protocol. The Boylan Report identifies, among other situations of outstanding disputes involving destruction of cultural property, the case of Cyprus and Turkey.[227] Boylan suggests that if parties to a conflict have ratified the 1977 Additional Protocol I, which incorporates the 1954 Convention, it could be possible to establish a fact-finding commission, as provided for by Article 90, to resolve disputes. While Cyprus has ratified Protocol I,[228] it appears that Turkey has not.[229]

Two international courts—the International Court of Justice under Chapter XIV of the UN Charter and Chapter II of the statute of the Court[230] and the ICC—are possible venues, provided that jurisdiction is accepted. In the case of the ICC, which came into effect in 2002, the Rome Statute provides it with jurisdiction to prosecute crimes against cultural property.[231] Article 8, paragraph(b)(ix) of the Rome Statute, titled "War Crimes," identifies as war crimes intentional direct attacks against buildings dedicated to religion, education, or historic places, provided that they are not military objectives. Such criminal conduct must occur within the context of an armed conflict.[232]

Even though the invasion occurred in 1974, the internationally wrongful acts of destruction, desecration, and pillage of religious and cultural property in the northern part of Cyprus have a continuing character that is closely linked to the 1974 events and the ensuing

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[225] *See* discussion of the Kanakaria Mosaics, Parts III and VI, *supra.*

[226] Ministry of Foreign Affairs of the Republic of Cyprus, *Smuggled Icons Returned to Lawful Owner –the Church of Cyprus*, , Dec. 1, 2007, http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/850B0CCA43B88255C225726100428EF4?.

[227] *See* BOYLAN, *supra* note 78, at 95.

[228] ICRC, International Humanitarian Law – Treaties and Documents, *Cyprus: Ratifications/Accessions*, http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=CY (last visited Mar. 6, 2009).

[229] *Id.*, *Turkey: Ratifications/Accessions*, http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=TR (last visited Mar. 6, 2009).

[230] *See, e.g.,* Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Merits Judgment), Gen. List No. 45, I.C.J. Reports of 1962 at 6, 14 (June 15, 1962), *available at* http://www.icj-cij.org/docket/files/45/4871.pdf. This case before the ICJ involved a territorial dispute issue between Cambodia and Thailand. The Court held that since the Temple of Preah Vihear was within the territory of Cambodia, Thailand was required to restore to Cambodia any objects taken from the Temple. *Id.*

[231] Rome Statute of the ICC, UN Doc. A/CONF. 183/9, 37 I.L.M. 1002 (1998), 2187 U.N.T.S. 90, *adopted* July 17, 1998, *entered into force* July 1, 2002, *available at* http://untreaty.un.org/cod/icc/ statute/romefra.htm.

[232] *Id.*

occupation. However, since Turkey is not a party to the ICC,[233] Cyprus is prevented from initiating legal action against Turkey before the ICC.

Parties also may use UNESCO to reach a settlement between them, as provided by Article 17, paragraph 5 of the 1970 UNESCO Convention, provided that such is requested by at least two state parties to the Convention who are involved in a dispute pertaining to its implementation.[234]

The 1995 UNIDROIT Convention allows parties to a dispute that arises due to a stolen or illegally exported cultural object to submit the dispute to any court or any other competent authority, or even to submit the dispute to arbitration.[235]

On March 23, 2009, a spokesman for the government of Cyprus, Stephanos Stephanou, in replying to a question as to whether Cyprus would request that Netherlands return to Cyprus four icons found in a private collection, which originally were stolen from the Church of Antifonitis in the city of Kyrenia, located in the occupied northern part of Cyprus, emphasized that the best way to preserve and protect the cultural heritage of Cyprus is to find a solution to the Cyprus issue and that military forces withdraw from Cyprus. The spokesman also referred to a decision to establish a bi-communal committee on cultural heritage.[236]

## X. Concluding Remarks

Turkey, during thirty-five years of occupying the northern part of Cyprus, has engaged in acts of destruction, desecration, and pillage of religious and archaeological sites, which constitute the religious and cultural heritage of the peoples of Cyprus, and the preservation of which is essential for the interest of humankind in general. The Government and the Church of Cyprus, as the claimants of ownership of cultural property located in the northern part of Cyprus, have been actively pursuing the repatriation of stolen religious objects and cultural artifacts. Under conventional and customary international law, Turkey, as an occupying power, bears responsibility for acts against cultural property. Responsibility also arises based on legal instruments addressing the illicit export and transfer of ownership of stolen cultural objects from the occupied northern part of Cyprus.

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April 2009

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[233] As of March 23, 2009, 108 states had become parties to the Rome Statute. *See* U.N. Treaty Collection Status List (Rome Statute), *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=373&chapter=18&lang=en.

[234] 1970 UNESCO Convention, *supra* note 203.

[235] 1995 UNIDROIT Convention, *supra* note 204, art. 8.

[236] Cyprus Embassy News, *Cyprus Government Concerned with Destruction of Cultural Heritage in Occupied Areas*, Embassy of the Republic of Cyprus in Washington, D.C., *available at* http://www.cyprusembassy.net/home/index.php?module=article&id=4481.

## ΠΑΡΑΡΤΗΜΑ ΙΙ

Έκθεση της Επιτροπής Ανθρωπίνων Δικαιωμάτων Ην. Εθνών για την Παραβίαση των Ανθρωπίνων Δικαιωμάτων και Θεμελιωδών Ελευθεριών στην Κύπρο [2005]

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# QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING THE QUESTION OF HUMAN RIGHTS IN CYPRUS

**Note by the Secretary-General***

1. In decision 2004/126, the Commission on Human Rights decided, without a vote, on 21 April 2004 to retain on its agenda sub-item (a), entitled "Question of human rights in Cyprus", of the item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world". It also decided to give the item due priority at its sixty-first session, on the understanding that action required by previous resolutions of the Commission on the subject would continue to remain operative, including the request to the Secretary-General to submit a report to the Commission regarding their implementation.

2. The annexed report, prepared by the Office of the High Commissioner for Human Rights, is herewith transmitted to the Commission pursuant to this decision. It covers the period up to 31 December 2004 and provides an overview of human rights issues in Cyprus based on such information as is available.

* The present document was submitted late in order to incorporate the most recent information.

**Annex**

# REPORT ON THE QUESTION OF HUMAN RIGHTS IN CYPRUS

## I. OVERVIEW

1. As of 31 December 2004, Cyprus remains divided, with a buffer zone maintained by the United Nations Peacekeeping Force in Cyprus (UNFICYP), set up in 1964. The UNFICYP mandate has been expanded and extended by successive Security Council resolutions. On 11 June 2004, the Security Council decided to extend the mandate for a further period ending 15 December 2004 and to consider the Secretary-General's recommendations in his review of the Force and to act on them within one month of receiving them. In August 2004, a United Nations team conducted a review of the UNFICYP mandate, force levels and concept of operations, as a result of which the size of the Force was reduced from 1,220 to 860 peacekeepers. On 22 October, the Security Council, in resolution 1568 (2004), decided to extend the mandate of UNFICYP for a further period ending 15 June 2005.

### Good offices mission

2. On 13 February 2004, following meetings organized by the Secretary-General between the Greek Cypriot and Turkish Cypriot leaders and representatives of Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland, the parties committed to a three-phase process leading to a referendum on a finalized plan before 1 May 2004. With agreement clearly not achievable, the process moved to phase 3 and, on 31 March, the Secretary-General presented a finalized plan, on which referenda were held on 24 April 2004.[a]

3. In the referenda, on the Greek Cypriot side, the plan was rejected by 75.8 per cent of voters, while on the Turkish Cypriot side the plan was approved by 64.9 per cent of voters. In his report to the Security Council on his mission of good offices dated 28 May 2004 (S/2004/437), the Secretary-General, inter alia, underscored the need for a comprehensive settlement of the Cyprus problem, while noting that the outcome of the referenda had resulted in a stalemate and that neither of the Cyprus parties had made a proposal to resolve the impasse. He therefore did not see any basis for resuming his good offices as long as the stand-off remained (para. 91). He also noted that the rejection of the settlement plan represented "another missed opportunity" to resolve the Cyprus problem. While noting that the decision of the Greek Cypriots to vote no on the plan had to be respected, the Secretary-General expressed the hope that the Greek Cypriots would reflect on the outcome of that process. He also believed that the members of the Council should encourage the Turkish Cypriots, and Turkey, to remain committed to the goal of reunification and "[i]n this context and for that purpose and not for the purpose of affording recognition or assisting secession", he expressed the hope that the Security Council could give a strong lead to all States to cooperate bilaterally and in international bodies "to eliminate unnecessary restrictions and barriers to lead the effort that have the effect of isolating the Turkish Cypriots and impeding their development", deeming such a move consistent with Council resolutions 541 (1983) and 550 (1984) (para. 93).

**Membership in the European Union**

4. On 1 May 2004, Cyprus formally joined the European Union (EU). However, the rejection of the comprehensive settlement plan by the Greek Cypriots meant that only the area under the control of the internationally recognized Government of Cyprus would enjoy the benefits of EU membership. Immediately following the referendum, the European Commission pledged to release €259 million - originally earmarked to support a political settlement - to the Turkish Cypriots to assist in overcoming their economic isolation.

5. In this context, the intra-island trade of certain goods began in August 2004 pursuant to an EU regulation. Further, the European Commission recommended to the Council of the European Union the opening of direct trade between the north of the island and the EU. Opposing this recommendation, the south proposed its own set of economic and confidence-building measures, which were largely dismissed by the Turkish Cypriots. In December 2004, the European Parliament endorsed the creation of a financial instrument to provide €259 million in financial support to the Turkish Cypriot community until 2006. As of the end of 2004, the stalemate in the EU Council concerning financial assistance and direct trade persisted.[b]

## II. HUMAN RIGHTS CONCERNS

6. The human rights concerns in Cyprus derive predominantly from the persisting division of the island which, in the absence of a political settlement, remains unresolved. The division of Cyprus has consequences for the enjoyment, on the whole island, of a number of human rights, including freedom of movement, freedom of association, property rights, freedom of religion, family rights, freedom of expression, voting rights, the right to education, the right to health, and human rights issues pertaining to the question of missing persons.

7. Over the past several years, United Nations treaty bodies have noted in their concluding observations and recommendations on the reports of Cyprus that the impact of the division of the island constitutes a serious obstacle to the enjoyment of human rights, most recently the Committee on the Rights of the Child in 2003 (see, inter alia, E/CN.4/2004/27, paras. 6-7).

**Freedom of movement**

8. In April 2003, the Turkish Cypriot authorities had partially eased restrictions on freedom of movement to the area under their control. The freedom of movement has also been facilitated by Greek Cypriot willingness to accept entry to the south by EU nationals and Cyprus visa holders who enter the island through ports in the north. For their part, in May 2004, Turkish Cypriot authorities agreed that Greek Cypriots could show identity cards, rather than passports, for crossing purposes.

9. With regard to the freedom of movement, Greek Cypriots are now permitted to enter the northern part of the island for an unlimited period on the condition that they reside in a hotel and not with Greek Cypriot community members unless they are "close relatives". While the partial opening of the "Green Line" has enabled Cypriots to go to places where they resided before 1974, they are not allowed to either recover or freely dispose of their property.

10. As a further goodwill gesture, after a gap of five years, the Government of Cyprus provided land passage to Turkish Cypriots for an annual visit to Kokkina.[c] In the same vein, in August, Turkish Cypriot authorities allowed the opening of a secondary school in a Greek Cypriot enclave and the resumption of religious services in the St. Mamas church at Morphou, both for the first time since 1974.

11. An issue related to freedom of movement, as well as freedom of association, is that of participation in intercommunal activities by members of both the Turkish Cypriot and Greek Cypriot communities. During the reporting period, UNFICYP continued to facilitate bicommunal meetings. In addition, bicommunal projects and cultural activities aiming to promote tolerance and a multicultural society in Cyprus have been supported by the Delegation of the European Commission to Cyprus.

**Freedom of religion**

12. With respect to freedom of religion, there have been improvements as regards reciprocal visits to places of worship due to the partial easing of restrictions on freedom of movement. After the Turkish Cypriot authorities' decision to relax crossing restrictions in April 2003, Greek Cypriots reported easy access to religious sites in the north, including Apostolos Andreas monastery. Turkish Cypriots were equally able to visit religious sites, including Hala Sultan Tekke mosque, in the government-controlled area. The generally amicable relationship among religions in Cypriot society contributed to religious freedom; however, there were a few reports of vandalism of unused religious sites. Maronites and Armenians are still not allowed to visit religious sites in the north which are located near military zones.

**The right to housing and property**

13. In the northern part of the island, Turkish Cypriot authorities reportedly continued to restrict Greek Cypriots from bequeathing their property if their heirs are not resident in the north. Since the easing of restrictions on movement, property of enclaved Greek Cypriots having left for the south has been placed in the "custody" of the Turkish Cypriot authorities, while previously property had been confiscated. An Independent Judicial Commission was established by the Turkish Cypriot authorities in June 2003 and is empowered to resolve property disputes that have arisen since 1974 in the northern part of the island. Accordingly, persons wishing to approach the Commission shall have unrestricted right of access to the northern part of the island for the purposes of the relevant procedure. It should be underlined that it is not within the Commission's competence to provide redress to the owners of immovable property regarding the enjoyment of their property rights, but merely to deal with compensation. To date, no applications have been submitted to the Commission.

14. In August 2004, the Turkish Cypriot side eased restrictions on Maronites enjoying or selling their property in the north to persons other than Greek Cypriots. Turkish Cypriot property in areas under the control of the Government of Cyprus is administered by the Directorate for Turkish Cypriot property management under the Ministry of the Interior. In principle, Turkish Cypriots settling in the southern part of the island or having emigrated abroad prior to 1974 are entitled to recover their property (although some unwarranted delays in the processing of reinstatement applications have been noted by the Ombudsman). On the other hand, Turkish Cypriots who have settled in the northern part of the island still

legally own their assets in the south, and are not entitled to dispose of them. The partial opening of the "Green Line" did not fundamentally alter the situation concerning property rights.

15. In a landmark decision of September 2004, the Supreme Court,[d] of the Republic of Cyprus ordered the return of Turkish Cypriot property in Episkopi that had been granted to two Greek Cypriot women refugees since the 1974 Turkish intervention. According to the facts of the case, the Turkish Cypriot applicant went to the south in September 2002 where he had lived prior to the 1974 intervention. In a letter to the Ministry of the Interior, the applicant requested that his property be returned to his possession. However, this request was turned down by the Ministry, stating that "[d]ue to the Turkish invasion of 1974 and the displacement of population, all Turkish Cypriot properties have come under the protection of the Interior Minister in a law passed in 1991, pending resolution of the Cyprus problem". In its ruling, the Supreme Court found no plausible explanation as to why there should be discrimination between the members of the then Turkish Cypriot community who had their usual place of residence in the areas controlled by the Republic on 1 July 1991 when the law took effect, and those who did not. Further, the Court found that such a distinction could not stand, as it would constitute an acceptance of the partition of the population imposed by the Turkish invasion and occupation forces and a refusal to recognize the property rights of those members of the Turkish community who, in opposition to the segregation of the population, desired to return to their homes and properties in the areas controlled by the Republic. In this connection, Cyprus President Tassos Papadopoulos stated that the Government would not leave Greek Cypriot "refugees" exposed, following this decision of the Supreme Court.

**Freedom of expression and right to information**

16. There have been reports about the continuing persecution of Turkish Cypriot journalists in the northern part of Cyprus. A number of Turkish Cypriot journalists working and writing in opposition Turkish Cypriot newspapers were taken before Turkish military courts and charged with insulting and undermining the so-called "Turkish Republic of Northern Cyprus", and the Turkish army and the prosecutor asked for up to 21 years' imprisonment for each one. There has, however, been a change in the Turkish Cypriot legal code pertaining to this issue. As of 1 October 2004, civilians can no longer be tried in military courts except in cases of espionage or physical attacks against soldiers or military infrastructure.

17. Others were threatened with death or attacked and beaten by gangs of the Turkish terrorist organization "Grey Wolves", aiming at silencing them.

**The right to vote and participate in political affairs**

18. In its judgement in *Aziz v. Cyprus* of 22 June 2004 (application No. 69949/01), the European Court of Human Rights overruled an official policy of the Republic of Cyprus whereby Turkish Cypriots could not be registered on the Greek Cypriot electoral roll. The Court noted that the difference in treatment in the present case resulted from the very fact that the applicant was a Turkish Cypriot and emanated from the constitutional provisions regulating the voting rights between members of the Greek Cypriot and Turkish Cypriot communities that had become impossible to implement in practice, and constituted a violation of article 14 of the European Convention on Human Rights (prohibition of discrimination), in conjunction with article 3 of Protocol No. 1.

19. Greek Cypriots and Maronites living in the north cannot participate in Turkish Cypriot elections; they are, however, eligible to vote in Greek Cypriot elections, but must travel to the south to exercise that right.

**The right to education and the right to health**

20. With regard to the right to education, Turkish Cypriot authorities reversed their stand and allowed a secondary school to operate at Rizokarpazo for Greek Cypriot children where 12 pupils have been studying since September 2004 in the three secondary grades. Despite this positive development, Turkish Cypriot authorities refused to countenance a request to refurbish a facility for the accommodation of teachers during that academic year. Similarly, Turkish Cypriot objection to certain content in textbooks led to the removal of pages from 13 of the 72 books intended for the secondary school. Meanwhile, the Turkish Cypriot side sought the good offices of UNFICYP to set up a Turkish-medium primary school at Limassol where some 70 Turkish Cypriot children attend school in the Greek language. Further, an estimated 30 Roma Turkish Cypriot children do not attend school. UNFICYP supports education in the mother tongue and has accordingly recommended to the Government the opening of a Turkish-medium primary school at the earliest opportunity. At the Government's request, UNFICYP has begun interviewing the parents of the Turkish Cypriot pupils at Limassol to determine the extent of their need in this regard. Parents of a dozen pupils have already indicated to UNFICYP that they would prefer Turkish-language instruction for their children.

21. As far as the right to health is concerned, Turkish Cypriot authorities continue to disallow doctors from the south to visit the Greek Cypriots and Maronites saying that the north's medical facilities are "adequate" to take care of these communities.

**Missing persons**

22. For the first time in nearly five years, the Committee on Missing Persons in Cyprus (CMP) convened on 30 August 2004 at the Ledra Palace. According to a press release issued by the Committee on 30 August 2004, the Greek Cypriot member of the CMP, Elias Georgiades, and the Turkish Cypriot Member, Rustem Tatar, reconfirmed their full commitment to the ultimate goal of resolving the humanitarian issue that equally affects the families in both communities.[e]

23. From 24 September until the end of October 2004, the CMP continued to work intensively, meeting at least once or twice every week. At the end of its meeting on 25 October 2004, the Committee stated in a press release that "it reached an agreement in principle with the INFORCE Foundation, a non-profit forensic science organization based in the United Kingdom, to undertake exhumation work in Cyprus". The Committee "is currently preparing relevant information for submission to INFORCE to assist it in the detailed planning of the exhumation work to be undertaken", adding that "a comprehensive budget for the project is expected from this institution to enable the CMP to conclude its agreement with INFORCE". It concluded that "after finalization of the agreement with INFORCE, this foundation is expected to commence survey work on the burial sites, in preparation for exhumations and identification of Greek Cypriot and Turkish Cypriot missing persons in Cyprus".

## III. CONCLUSION

24. Despite some recent positive developments, the persisting de facto partition of the island constitutes a major obstacle to the enjoyment of human rights by all Cypriots throughout the island. The situation of human rights in Cyprus therefore would greatly benefit from the achievement of a comprehensive settlement of the Cyprus problem.

### Notes

[a] Like earlier versions of the settlement plan, the revised document of 31 March 2004 provides for the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the International Covenant on Civil and Political Rights to be an integral part of the Constitution, and for the prohibition of discrimination against any person on the basis of his or her gender, ethnic or religious identity, or internal "constituent state" citizenship status. The document provides for freedom of movement and freedom of residence other than expressly provided to the contrary. It also contains provisions for the protection of the rights of the Maronite, Latin and Armenian minorities, and of Greek Cypriot residents of certain villages to be within the Turkish Cypriot "constituent state" and Turkish Cypriot residents of certain villages to be within the Greek Cypriot "constituent state". It proposes a comprehensive regime for dealing with properties affected by events since 1963, in accordance with international law, respect for the individual rights of dispossessed owners and current users, and the principle of bi-zonality; and for the relocation to adequate alternative accommodation of persons affected by territorial adjustment. The document also proposes that steps be taken to conclusively resolve the missing persons issue as well as establish an independent and impartial reconciliation commission to promote understanding, tolerance and mutual respect between Greek Cypriots and Turkish Cypriots which, inter alia, would have the effect of promoting a culture of respect for human rights.

[b] In February 2005, the EU Council adopted the European Commission's proposal to improve the so-called "Green Line Regulation" which would further facilitate the movement of goods and persons across the Green Line.

[c] They were commemorating an August 1964 battle, which ended the most violent stage of the Cyprus inter-communal conflict.

[d] September 2004 decision of the Supreme Court of Cyprus concerning Ari Mustafa, applicant.

[e] The Committee on Missing Persons (CMP), established in 1981, is composed of three members. The Greek Cypriot and Turkish Cypriot sides each appoint a member. The Third Member is appointed by the United Nations Secretary-General, upon recommendation of the International Committee of the Red Cross. Since January 2000, there has been no Third Member, but the First Assistant to the Third Member of the CMP has continued to work with the two sides, as Acting Third Member, to overcome obstacles and enable the CMP to resume its activities and achieve its aims. During the period under review, the Third Member ad interim, continued to work with the two sides.

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**ΠΑΡΑΡΤΗΜΑ ΙΙΙ**

Έκθεση Προόδου της Τουρκίας [σελ. 1-43]
Ευρωπαϊκή Επιτροπή, 2011

EUROPEAN COMMISSION

Brussels, 12.10.2011
SEC(2011) 1201 final

# COMMISSION STAFF WORKING PAPER

# TURKEY 2011 PROGRESS REPORT

*Accompanying the document*

## COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## Enlargement Strategy and Main Challenges 2011-2012

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# 1. INTRODUCTION

## 1.1. Preface

Following the conclusions of the Luxembourg European Council in December 1997, the Commission has reported regularly to the Council and the Parliament.

This report on progress made by Turkey in preparing for EU membership largely follows the same structure as in previous years. The report:

- briefly describes the relations between Turkey and the Union;
- analyses the situation in Turkey in terms of the political criteria for membership;
- analyses the situation in Turkey on the basis of the economic criteria for membership;
- reviews Turkey's capacity to assume the obligations of membership, that is the *acquis* expressed in the Treaties, the secondary legislation and the policies of the Union.

This report covers the period from October 2010 to September 2011. Progress is measured on the basis of decisions taken, legislation adopted and measures implemented. As a rule, legislation or measures which are being prepared or awaiting Parliamentary approval have not been taken into account. This approach ensures equal treatment across all reports and permits an objective assessment.

The report is based on information gathered and analysed by the Commission. Many sources have been used, including contributions from the government of Turkey, the EU Member States, European Parliament reports[1] and information from various international and non-governmental organisations.

The Commission draws detailed conclusions regarding Turkey in its separate communication on enlargement[2], based on the technical analysis contained in this report.

## 1.2. Context

The Helsinki European Council of December 1999 granted the status of candidate country to Turkey. Accession negotiations with Turkey were opened in October 2005.

The Association Agreement between Turkey and the then EEC was signed in 1963 and entered into force in December 1964. Turkey and the EU formed a customs union in 1995.

## 1.3. Relations between the EU and Turkey

*Accession negotiations* with Turkey continued. During the preparatory analytical phase, the level of preparedness to start negotiations on individual chapters has been assessed on the basis of screening reports. Out of a total of 33 screening reports, one has still to be delivered to the Council by the Commission, whilst nine are being discussed in the Council.

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1 The rapporteur for Turkey is Mrs Oomen-Ruijten.

2 Enlargement Strategy and Main Challenges 2011-2012 - COM(2011) 666.

So far, negotiations have been opened on 13 chapters (Science and research, Enterprise and industry, Statistics, Financial control, Trans-European networks, Consumer and health protection, Intellectual property law, Company law, Information society and media, Free movement of capital, Taxation, Environment and Food safety, veterinary and phytosanitary policy), one of which (Science and research) was provisionally closed. The December 2006 Council decision[3] remains in force.

The *enhanced political dialogue* between the EU and Turkey has continued. A political dialogue meeting was held at political director level in July 2011. These meetings focused on the main challenges faced by Turkey in terms of the Copenhagen political criteria and reviewed the progress made towards fulfilling Accession Partnership priorities. Foreign policy issues relating to regions of common interest to the EU and Turkey, such as the Middle East, Western Balkans, Afghanistan/Pakistan and the Southern Caucasus, were also regularly discussed. Turkey has become more active in its wider neighbourhood and is a leading regional player. A number of high-level visits from Turkey to the European institutions took place during the reporting period.

The EU-Turkey *Customs Union* continues to boost bilateral trade between the EU and Turkey, which totalled € 103 billion in 2010. Turkey is the EU's seventh biggest trading partner while the EU is Turkey's biggest. Almost half of Turkey's total trade is with the EU and almost 80% of FDI in Turkey comes from the EU. However, Turkey is not implementing the Customs Union fully and maintains legislation that violates its commitments under the Customs Union. As a result, several trade issues remain unresolved. A number of Turkey's commitments on removing technical barriers to trade such as import licences, restrictions on imports of goods from third countries in free circulation in the EU, State aid, enforcement of intellectual property rights, requirements for the registration of new pharmaceutical products and discriminatory tax treatment remain unfulfilled. Progress can be reported on Turkey's long-standing ban on imports of live bovine animals, beef meat and other animal products. The EU urged Turkey to remove all remaining restrictions on the free movement of goods, including on means of transport regarding Cyprus, and to implement the Customs Union fully.

The EU is providing guidance to the authorities on reform priorities under the *Accession Partnership* adopted in February 2008. Progress on these reform priorities is encouraged and monitored by the bodies set up under the Association Agreement. The Association Committee met in March 2011 and the Association Council in April 2011. Eight sectoral sub-committee meetings have been held since November 2010.

The multilateral economic dialogue between the Commission, EU Member States and Candidate Countries in the context of the pre-accession fiscal surveillance continued, including a meeting at Ministerial level in May in Brussels. These meetings focused on the main challenges posed to Turkey by the Copenhagen economic criteria.

As regards *financial assistance*, some € 781.9 million have been earmarked for Turkey from the Instrument for Pre-accession Assistance (IPA) in 2011. The revised Multiannual Indicative Planning Document (MIPD) for 2011-2013, was adopted by the Commission in June 2011. The new MIPD follows asector-based approach and aims to focus assistance on

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[3] The decision states that negotiations will not be opened on eight chapters relevant to Turkey's restrictions regarding the Republic of Cyprus and no chapter will be provisionally closed until the Commission confirms that Turkey has fully implemented the Additional Protocol to the Association Agreement.

political priorities better in order to achieve a greater impact. Support is focusing on institutions directly concerned by political reforms in the judiciary and law enforcement services, on adoption and implementation of the *acquis* in priority areas and on economic, social and rural development. In addition, Turkey is benefiting from a series of regional and horizontal programmes under IPA.

Under both the national programme and the Civil Society Facility, greater EU financial support has been provided to *civil society*, in particular to strengthen the capacity of civil society organisations and encourage a *civil society dialogue* between Turkey and the EU. Support has also been given for participation by Turkey in EU programmes and agencies.

Assistance under IPA is implemented by means of decentralised management, which means that it is managed by the Turkish authorities as a result of an accreditation process carried out by the Commission that was completed in 2009 for IPA components I-IV and in August 2011 for component V. In 2011 implementation got under way and absorption of funds started to increase. Nevertheless, delays continued to occur and Turkey needs to strengthen its capacity to deliver results, absorb funds, develop a project pipeline and implement all IPA components in a timely manner. The supervision by the National Authorising Officer needs vigorously to address weaknesses in the system, including monitoring and improving the quality and efficiency of the project and programme cycles.

Turkey actively participates in the following EU Programmes and Agencies: Seventh Research Framework Programme, Customs 2013, Fiscalis 2013, European Environment Agency, Competitiveness and Innovation Framework Programme (including Entrepreneurship and Innovation Programme and Information Communication Technologies Policy Support Programme), Progress, Culture 2007, Lifelong Learning and Youth in Action. IPA funds are used to meet part of the costs of participation in most of these programmes.

The Turkish ratification of the agreement for their participation in the European Monitoring Centre for Drugs and Drug Addiction remains outstanding.

## 2. POLITICAL CRITERIA AND ENHANCED POLITICAL DIALOGUE

This section examines progress made by Turkey towards meeting the Copenhagen political criteria, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. It also monitors compliance with international obligations, regional cooperation and good neighbourly relations with enlargement countries and Member States.

### 2.1. Democracy and the rule of law

General elections took place on 12 June 2011 with a high turnout. The electoral process was free and fair and was generally marked by pluralism and a vibrant civil society. Voting and counting on election day were mostly calm and professionally managed (*See section on Parliament*). Over the reporting period, concerns were raised regarding freedom of expression, including media freedom. The prevailing political climate, lacking an adequate dialogue and spirit of compromise between political parties, strained relations between key institutions; this atmosphere hampered the continuation of the reform process. The *Sledgehammer* trial, the first ever into an alleged coup plan in Turkey, began in December 2010. Following the seizure of evidence at the Gölcük navy headquarters a total of 163

military officers (of whom 106 serving), including several former top commanders, were arrested. They were charged of attempting to overthrow the government through force and violence. Requests for the release of defendants were refused. According to official data, the number of defendants has risen to 224, 183 of whom are under arrest. Restrictions on access to certain evidence referred to in the indictment raised concerns about the rights of the defence and to a fair trial. The failure to give detailed grounds for decisions on detention is another source of concern raised by the defence (*See also section on civilian oversight of security forces*).

The trial of the alleged criminal network *Ergenekon* continued. The judicial investigation expanded further and, according to official data, the number of defendants has risen to 238, 53 of whom are under arrest. The investigation into alleged media involvement continued with the detention of a number of journalists, among whom prominent supporters of the investigation into Ergenekon. In March 2011, copies of an unpublished book written by one of the arrested journalists were confiscated on the orders of a court for being a "document of a terror organisation". Confiscation of an unpublished book as evidence of crime raised concerns about press freedom in Turkey and the legitimacy of the case *(See section on freedom of expression)*.

A linkage was made by the judiciary between the Ergenekon case and the murder of three Protestants in Malatya in April 2007. Several people, including the former commander of the gendarmerie in Malatya, were detained in March 2011. This was followed by a search of the homes and offices of several theology professors known for their work on missionary activities in Turkey.

The time lag between the arrests and presentation of indictments, the restricted access by the defence to evidence put forward by the prosecution and the secrecy of investigation orders fuelled concerns about effective judicial guarantees for all suspects. The same applies to the extensive application of arrest-related articles of the Code on Criminal Procedures, which at certain instances can have the same effect as punitive measures. The length of pre-trial detention is a cause for concern (*See section on the judicial system*).

The three specially authorised prosecutors in the Ergenekon case were reassigned to other duties by the High Council of Judges and Prosecutors (HSYK) in March 2011. The Deputy Director of Intelligence for Istanbul in charge of the Ergenekon enquiry was also moved to a new post. These measures were viewed as reflecting the judicial authorities' and the government's unease with the handling of the investigation.

Concerns about judicial procedures were also reported in connection with the KCK[4] case in which around 2,000 politicians, locally elected representatives and human rights activists in the south-east have been detained since April 2008. The investigation continues to widen. The main KCK trial of 152 defendants (104 of whom are under arrest) charged with membership of an illegal armed organisation started in October 2010. However, the trial came to a standstill after the court refused to hear the defence in Kurdish. Frequent use of arrests instead of judicial supervision, limited access to files, failure to give detailed grounds for detention decisions and revisions of such decisions highlight the need to bring the Turkish criminal justice system into line with international standards and to amend the anti-terror legislation.

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4 Union of Communities in Kurdistan

The detention of elected representatives is a challenge to local government and hampers dialogue on the Kurdish issue.

*Overall*, the Ergenekon investigation and the investigations into other alleged coup plans remain an opportunity for Turkey to shed light on alleged criminal activities against democracy and to strengthen confidence in the proper functioning of its democratic institutions and the rule of law. However, concerns remain over the handling of investigations, judicial proceedings and the application of criminal procedures putting at risk the rights of the defence. The lack of any authoritative source of information on all these issues of wide public interest from either the prosecution offices or the courts raises similar concerns. All of this raised concerns in the public about the legitimacy of the cases.

*Constitution*

After the constitutional reform package was approved by referendum in September 2010, the government launched work on implementing it. Priority was given to the reform of judicial structures, with laws on the High Council of Judges and Prosecutors[5] and on the Constitutional Court adopted in December 2010 and March 2011, respectively. These laws addressed a number of priorities of the Accession Partnership and criticisms of the previous system. The Venice Commission of the Council of Europe had been consulted in the process.

Since the September 2010 constitutional referendum and the June 2011 elections, consensus has emerged on the need for a *new Constitution* to replace completely the 1982 Constitution, which had been adopted following the 1980 military coup. The governing party has pledged a democratic and participatory process with the broadest possible consultation. The Parliament Speaker consulted constitutional lawyers on the process of drafting and adopting a new constitution; he also authorised the launch of a website to function as a forum for public contributions and has started the nomination of three members from each of the four parties present in Parliament for the ad hoc drafting committee. Further concrete steps need to guarantee an inclusive process with the involvement of all political parties and civil society.

However, the adoption of legislation implementing the September 2010 constitutional amendments was not accompanied by broad and effective public consultation involving stakeholders in the country, despite government commitments to this (*See section on the judicial system*).

*Overall*, there has been some progress in implementing the 2010 constitutional reform, notably in the field of the judiciary. A new Constitution would cement the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and address long-standing problems, including the Kurdish issue. Both the government and the opposition are committed to working on a new Constitution upholding freedoms. Due attention needs to be paid to ensuring the broadest possible consultation in this work, involving all political parties and civil society.

*Parliament*

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[5] On 15 February, the main opposition party (CHP) applied to the Constitutional Court for annulment of this law.

The Turkish Grand National Assembly (TGNA) convened for the first time early July 2011 and elected former Deputy Prime Minister Mr Cemil Çicek as its 25th speaker. He was elected in a third round with 322 votes.

Earlier, on 12 June *Parliamentary elections* had taken place, leading to a major renewal of parliament with 349 first-time MPs (64% of the total). The incumbent AKP remained the leading party with popular support running at 49.1%, ahead of the CHP on 25.9% and the MHP with 13%. The BDP-backed independent candidates received 6.7% of the votes. The AKP secured 326 parliamentary seats, four short of the three-fifths majority needed to put constitutional amendments to a referendum without the support of other parties. The CHP won 135 seats, the MHP 53 and the BDP 36. The number of female parliamentarians increased from 48 to 78. The highest number of female members of parliament is amongst the AKP (45), followed by the CHP (19), BDP-led bloc (11), and the MHP (3).

The elections took place in a generally peaceful atmosphere. For the first time, political parties and candidates were able to purchase broadcasting time for political advertisements. In March 2011 the Supreme Election Board (YSK) ruled that, while political parties and candidates will principally use Turkish in their advertising, use of other languages, including Kurdish, is possible[6]. Various parties tried to target Kurdish voters by running election campaign advertisements on TRT 6, the first national Kurdish language TV station. Their requests to do so were rejected by YSK.

On the one hand, international observers (the OSCE Office for Democratic Institutions and Human Rights (ODIHR)) praised the electoral process as democratic, pluralistic and shaped by a vibrant civil society, on the other they also criticised worrying developments concerning fundamental freedoms, in particular freedom of expression.

However, the campaign was marred by some tension and violence. A terrorist attack killed a policeman escorting governing party officials following a rally in May 2011. Violent incidents causing damage to offices of political parties were also reported across Turkey.

No changes were made to the electoral system. The 10% of the national vote required for representation in parliament, which is the highest threshold in any Council of Europe member state, remains, despite calls by political parties and civil society organisations for it to be lowered. This issue featured prominently during the election campaign.

As regards the *functioning of parliament,* the TGNA enacted a large number of laws in its final legislative year before going into recess in early April 2011. Several of them covered areas related to the Copenhagen political criteria. These included the implementing legislation adopted following the 2010 constitutional amendments, legislation restructuring the high courts with the objective to decreasing the backlog of cases and the Law on the Turkish Court of Accounts (TCA).

The Law on the TCA was adopted in December 2010. It authorises the Court to audit public expenditure on behalf of parliament, thus strengthening parliamentary oversight. The TGNA's Strategic Development Plan for 2010-2014 addresses key organisational and management issues.

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6 An April 2010 amendment to the Law on fundamental principles of elections and the electoral registry deleted the explicit prohibition of use of languages other than Turkish, thus allowing oral and written advertising in languages other than Turkish during the election campaign.

However, the polarisation of the government and opposition hampered work on political reforms, notably in parliament, and was not conducive to holding the executive to account on policy matters. The capacity of parliament to monitor performance and conduct external audits is still insufficient. Closer interactive dialogue and cooperation between parliament and the TCA is needed. There was no progress on improving parliament's rules of procedure. Since 2009 a draft has been pending.

No progress was made on aligning legislation on the procedures and grounds for closing political parties with European standards either. In December 2010, the European Court for Human Rights (ECtHR) found that Turkey had violated the right to freedom of assembly and association[7] in the 2003 ban of the People's Democracy Party (HADEP). This was the ninth judgment against Turkey for banning a political party.

There are concerns about the wide scope of parliamentary immunities, notably from arrest in cases concerning corruption, and also over the selective and restrictive interpretation of the law in cases concerning freedom of expression of members of parliament. The nomination by opposition parties of suspects being tried in the ongoing Ergenekon, Sledgehammer and KCK cases for election to parliament posed a new challenge to the interpretation of Article 14 of the Constitution, which restricts immunities when crimes against the 'integrity of the State' are concerned. This has been invoked against MPs of Kurdish origin in the past.

When the courts refused to release 8 MPs-elect from prison, and the YSK decided to strip one MP-elect of his status, the CHP and BDP MPs-elect refused to take their oath at the constituting session of Parliament. In July, though, the CHP MPs took their oath and in the beginning of October the BDP MPs-elect did so as well. General concerns about long pre-trial detentions and the restrictive interpretation of anti-terror-legislation are thus also highlighted by the number of MPs-elect in prison. The proposal by the main opposition party for a code of ethics for parliamentarians was not followed up. Two former MPs from the closed-down DTP had their ban from political office overturned, but were not reinstated in parliament.

*Overall,* elections were held in line with international standards. The electorate returned a parliament with 349 first-time MPs (64% of the total). Women and minorities, including non-Muslims and the disabled, were underrepresented. Laws concerning financing of political parties and election campaigns, closure of political parties and parliamentary immunities have yet to be aligned with European standards. Further efforts are needed to strengthen parliament's capacity to perform its functions of law-making and oversight over the executive.

*President*

The President continues to maintain his conciliatory role in the face of the polarisation prevailing in the country.

He addressed a number of key issues affecting Turkey, with constructive statements and interventions. In December 2010, he paid a visit to Diyarbakir, becoming the first President to visit the BDP-run municipality in ten years. Amid demands for democratic autonomy and bilingualism, he reiterated his commitment to addressing the Kurdish issue. In January 2011, the President instructed the State Supervisory Council (SSC) to conduct a thorough inquiry

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[7] HADEP was closed by the Constitutional Court and 46 party activists were banned from politics on accusations that the party was aiding and abetting the PKK. The ECtHR pointed to lack of sufficient evidence in support of these claims.

into the Hrant Dink murder case, acknowledging embarrassment at Turkey's failure to conclude the judicial process in line with a ruling by the ECtHR back in December 2010. On several occasions, he criticised long detention periods in the ongoing alleged coup trials as constituting *de facto* punishment.

The President continued to play an active role in foreign policy.

There is still ambiguity around the term of office of the President, which may run until 2012 or 2014, depending on how the YSK interprets the October 2007 constitutional amendment, which introduced direct presidential elections for a period of five years.

*Government*

Three months before the June elections the Prime Minister announced a substantial restructuring of the Turkish administration, targeting primarily the ministerial level.

After the elections, the 61st cabinet of the Turkish Republic was approved by the President on 6 June 2011.

The government decided to establish a Ministry of EU Affairs and appointed an EU Minister for the first time. The new structure assigns responsibility for the accession negotiations to the EU Minister as Chief Negotiator and Head of the Negotiation Delegation.

As regards the *functioning of government and local government,* the government started implementing its action plan to apply the 2010 constitutional amendments. It submitted draft legislation to parliament on the Turkish Court of Accounts (TCA), the Supreme Board of Radio and Television, military service, the High Council of Judges and Prosecutors and on the restructuring of the Court of Cassation, Council of State and Constitutional Court.

The government reaffirmed its commitment to EU accession on several occasions and, in particular, through the establishment of an EU Ministry after the June elections. The EU Minister and Chief Negotiator continued his efforts to further streamline inter-ministerial work for the accession negotiations and to involve civil society in the process. The Reform Monitoring Group continued to meet. Progress was achieved at provincial level on coordination and dissemination of EU-related information and work, following the designation, in 2010, of a deputy governor in each province responsible for EU affairs.

However, the follow-up to the 2008 National Programme for the Adoption of the *Acquis* (NPAA) and of the 2010-2011 Action Plan outlining legislation to be enacted needs to be improved.

No progress has been made on devolution of powers to local government, in particular with transferring financial resources to local administrations. Municipalities are thus heavily dependent on centrally allocated revenue. No steps have been taken to implement the 2007[8] Recommendations of the Council of Europe Congress of Local and Regional Authorities to

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8 In addition, the Congress of Local and Regional Authorities adopted a report making recommendations on local and regional democracy in Turkey on 24 March 2011. These recommendations include re-examining Turkey's obligations under the Charter of Local Self-Government, with a view to removing the reservations entered in respect of many of its terms, and taking steps to sign and ratify the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages

use languages other than Turkish in public services or to reform the Municipality Law to allow mayors and municipal councils to take 'political' decisions without fear of judicial proceedings being launched against them. The continuing detention of several elected mayors and local representatives in the south-east in connection with the KCK case poses a challenge for local government (*See situation in the east and south-east*).

*Overall*, the government gave priority to implementing the 2010 amendments to the Constitution. Progress was made prior to the elections, notably in the field of the judiciary. Work on a new Constitution would further advance the reform agenda, including on devolving adequate powers to local government. However, the declared commitment to EU accession was not sufficiently reflected in the implementation of the national programmes.

*Public administration*

The 2010 amendments to the Constitution introduced access to information as a constitutional right. In line with the new constitutional provisions which pave the way for an Ombudsman institution, a draft law was submitted to parliament in January 2011. The government consulted, and developed a good working relationship with, the European Ombudsman.

The revised Law on the Turkish Court of Accounts (TCA) marks progress on implementing the Public Financial Management and Control Law, by granting the TCA an external audit mandate over most public expenditure. In order to raise awareness on accountability and enhance transparency, these reports are to be public and easily available, with minimum exceptions on grounds of 'national security'.

Progress has been reported in the preparations for strategic plans by public institutions, with almost all institutions adopting such plans that have subsequently been reviewed by the State Planning Organisation.

In February 2011, amendments to the Civil Service Law introduced benefits for temporary and contractual public servants who are disabled, pregnant or parents of newborn babies.

Work on providing basic public services on-line (e-government) continued, with a view to increasing transparency and accountability. Regulatory impact assessments (RIAs) and application of RIA guidelines enhanced the quality of regulations on several projects.

However, the comprehensive civil service reform required to modernise human resources management has yet to materialise. Such a reform would ensure transparency and merit-based advancement and appointments, in particular to high-level positions. Red tape has not been reduced.

A government request for parliamentary authorisation to rule by decree-law on a number of specific issues for a period of six months was granted amid strong criticism by the opposition in April 2011. The declared aim was to facilitate restructuring of the central administration, by establishing, merging or closing ministries. One of the main changes is the introduction of an additional level between the Minister and the undersecretary of "deputy minister" in 20 of the ministries. These posts can be given to officials from outside the parliament, including representatives of the private sector. The parliamentary authorisation also empowered the government to amend the Civil Service Law in order to regulate the principles and procedures for the appointment, promotion, transfer or compulsory retirement of officials, workers and contract personnel employed in public institutions.

The Law establishing the Ombudsman has yet to be adopted. A draft has already been submitted to parliament. It provides for a Head Ombudsman to be elected by parliament. There could be up to four rounds of voting; in the fourth, the Head Ombudsman is elected by simple majority. As the Ombudsman does not issue binding decisions, he or she must be held in high regard by the people and be perceived as non-partisan, fair, impartial and reasonable. In this regard, EU Member States' practice requires consensus and, thus, involves high parliamentary majorities for election of the Ombudsman. The draft also provides that transactions by the army of a military nature do not fall under the powers of the Ombudsman. The practice in most EU Member States is that an Ombudsman oversees the military in one way or another. Other provisions of the draft would empower the Ombudsman to respond to individual complaints and recommend improvements in the way the public administration works. There are no provisions allowing the Ombudsman to conduct inquiries on his or her own initiative. Finally, the draft grants Turkish citizens up to 90 days to submit complaints to the Ombudsman. This is short compared with practice at EU level.

Further efforts are needed to build capacity to implement the revised Law on the TCA and to carry out the full range of government auditing so that the TCA can fulfil its role of ensuring accountability in the public administration. Efforts are also required to implement the Public Financial Management and Control Law, particularly on strengthening internal audit capacity and the strategy development units and implementing strategy documents.

A decree adopted in August 2011 authorises relevant ministers to monitor and inspect all kinds of activities and transactions of independent regulatory authorities established in recent years in line with obligations stemming from the *acquis* or international standards. This raises concerns as to the independence of the regulatory authorities when carrying out their duties in a number of policy areas such as competition, energy and information society.

No progress can be reported on the decentralisation process. Devolution of powers, in particular transfer of financial revenues to local administrations has not materialised.

*Overall*, there has been some progress in legislative reforms with regard to the public administration and civil service. Attention needs to be paid to establishment of the Ombudsman institution. Greater political support for public administrative reform and decentralisation is necessary.

*Civilian oversight of security forces*

In October 2010, the National Security Council approved a revised National Security Policy. This document is not public. It was reportedly prepared mainly by the civilian authorities.

The investigation into the "Sledgehammer" alleged coup case was extended with the arrest of further officers, mostly from the Air Force. Hearings of the case continued before the 10th Istanbul Serious Crimes Court in Silivri. (*see section 2.1 Democracy and the Rule of Law*) The trial of seven suspects, including a former Kayseri Gendarmerie Brigade Commander and a former Mayor of Cizre, who are charged with twenty murders in the Southeast, is continuing. On the initiative of NGOs and in response to requests from the families of missing persons, excavations of mass graves have started. Calls for a "truth commission" have been rejected. Further to the 2010 constitutional amendments, decisions by the Supreme Military Council concerning dismissals of military personnel have been opened to civilian judicial review. Military officers dismissed from the army now have the right to appeal against their dismissals and retire with benefits or to obtain employment at a state institution. A

commission has been set up within the Ministry of Defence to examine applications and decide within a year. Following a decision by the Military Court of Cassation the Şemdinli case[9] is now tried by the Van Serious Crimes Court, a civil court. During the first hearing in July the court accepted a lawyers' request to investigate four high-ranking officers, including a former Chief of Staff.

As regards civilian oversight of military expenditure, good progress was made, in the form of adoption of the Law on the Court of Accounts in December 2010. This provides for external *ex-post* audits of armed forces' expenditure. It also paves the way for audits of extra-budgetary resources earmarked for the defence sector, including the Defence Industry Support Fund.

The Under-Secretariat for Public Order and Security, established in 2010 to develop and coordinate counter-terrorism policies, and affiliated to the prime Ministry since July 2011, came into operation and served as Secretariat for the Counter-Terrorism Coordination Board. The Board convened for the second time in February 2011.

The number of incidents where the armed forces exerted formal and informal influence over political issues beyond their remit continued to decrease.

On the eve of the Supreme Military Council of August 2011, the Chief of Staff, along with the Force Commanders, requested their retirement. Appointment of the force commanders in the Supreme Military Council meeting without any delay affirmed the government's control over the appointment of top-level commanders. However, promotions continue to be determined by the General Staff with limited civilian control. Further reforms on the composition and powers of the Supreme Military Council, particularly on the legal basis of promotions, still need to materialise.

For the first time, President Gül briefed the Speaker of Parliament and the leader of the main opposition party about the content of the National Security Council after the meeting in August.

However, on some occasions, the armed forces made comments about ongoing court cases and investigations. Civilian oversight needs to be further reinforced, particularly in relation to the law enforcement duties of the gendarmerie and to the military justice system. The gendarmerie does not report to the Ministry of the Interior and disciplinary offences are taken to the General Staff, bypassing both the Ministries of the Interior and Defence. The Law on the provincial administrations, which provided the legal basis for the annulled EMASYA Protocol allowing military operations to be carried out without the consent of local civilian authorities, has yet to be amended. There is a lack of transparency and accountability in institutions in the security sector, particularly those with intelligence duties.

The existing legislation, including the Law on the establishment and proceedings of military courts defining the functions and jurisdiction of these courts has yet to be amended in order to turn the new constitutional provisions into legal reality. These new constitutional provisions include matters related to the jurisdiction of military courts, the trial of the Chief of Staff and the commanders of the armed forces by the Constitutional Court for offences related to their duties and the trial by civilian courts of offences against the security of the State. Finally, the

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9 The defendants are accused of the November 2005 bombing that killed one person and injured others in the town of Şemdinli in South-East Turkey.

lack of judicial review of all decisions regarding career management by the Supreme Military Council and all other military authorities, remains a concern.

The exclusion of the Foundation for Strengthening the Armed Forces, which controls significant financial expenditure , from the audit mandate of the TCA is a major shortcoming of the revised Law on the TCA. Publication of the external audit reports on defence, security and intelligence institutions will be governed by a regulation yet to be adopted by the Council of Ministers.

No change was made to the Internal Service Law of the Turkish armed forces, which defines the duties of the military and contains an article leaving the military significant scope for intervention in politics. The Law on the National Security Council was not amended and continues to provide a broad definition of security which, depending on interpretation, could cover almost any policy field. The Chief of Staff continues to report to the Prime Minister rather than the Minister of Defence.

The selective accreditation by the military of certain media has continued. The secondary school curriculum continues to include a national security course given by military officers.

*Overall*, good progress has been made on consolidating the principle of civilian oversight of security forces. The Supreme Military Council of August 2011 was a step towards greater civilian oversight of the armed forces. Civilian oversight of military expenditure was tightened and a revised National Security Plan adopted. In addition, Supreme Military Council decisions were opened to civilian judicial review. However, further reforms - on the composition of the Supreme Military Council, military justice system and the Personnel Law of the Turkish Armed Forces – are still needed. In several instances, legislation intended to increase civilian oversight of the military (the Court of Accounts Law and the draft Ombudsman Law) was amended in parliament, weakening such oversight. On some occasions, the General Staff made comments on ongoing court cases.

*Judicial system (see also Chapter 23 – Judiciary and fundamental rights)*

There has been progress in the reform of the judiciary, notably with implementing the 2010 constitutional amendments.

As regards the *independence* of the judiciary, a Law on the High Council of Judges and Prosecutors was adopted in December 2010. The government consulted the Venice Commission of the Council of Europe. This law, together with the constitutional amendments approved by referendum in September 2010, established a new composition of the High Council[10] that is more pluralistic and representative of the judiciary as a whole. Sixteen of its judicial full members (out of twenty-two) and all twelve substitutes are now elected directly by judicial bodies.

Ministerial influence has been reduced: the Minister of Justice remains President of the High Council and the Undersecretary remains an *ex officio* member, but as a result of the enlargement of the Council, the Ministry now accounts for less than 10% of the total membership. The Minister of Justice does not sit in any of the three chambers where work is

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10 The number of full members of the High Council increased from seven to twenty-two. In addition to representatives of the Court of Cassation and the Council of State, the new members include representatives of first-instance courts, the Justice Academy, law faculties and lawyers.

conducted, nor does he participate in plenary meetings on disciplinary matters. The Minister and the Undersecretary no longer have the possibility to obstruct the decision-making process of the High Council by their mere absence. Previously, they had an 'empty chair' blocking power that they actually used.

The Inspection Board, previously under the Ministry of Justice, has now been transferred to the High Council. Anonymised versions of decisions can be published on the High Council's official website. This promotes legal certainty and confidence in the proper administration of justice. As regards effective remedies, appeals to judicial bodies against decisions concerning dismissal from the profession are now permitted. The newly elected High Council held meetings in provinces with judges and prosecutors to collect information and discuss reform proposals.

Ten full and six substitute members of the High Council were elected by first-instance judges and prosecutors in October 2010. More than 98% of the first-instance judges and prosecutors voted. Participation as candidates was open to all judges and prosecutors, including those working at the Ministry of Justice. The vote was secret and campaigning prohibited. An appeal to the Supreme Election Board (YSK) alleging unfair elections and undue influence by the Ministry of Justice was rejected unanimously. The High Council started to function with its 22 full members in November as a public legal entity with administrative and financial autonomy from the Ministry of Justice.

However, in elections of members of the High Council, every judge and prosecutor has the right to cast as many votes as the number of full and substitute Council members to be elected. In this system imposed by the Constitutional Court, candidates who are voted by the majority could take all the seats, thus excluding those supported by voters from a minority. Nomination of the four non-judicial members of the High Council is left to the discretion of the President of the Republic, whereas the National Assembly is not involved. The current provisions do not ensure permanent representation of members of the Bar in the High Council.

The Minister can veto the launching of disciplinary investigations against judges and prosecutors by the High Council. The judicial review does not cover all first-instance decisions of the High Council, potentially affecting judicial independence or impartiality (e.g. decisions concerning promotions, transfers to another location and disciplinary sanctions). Rules on dismissal of judges and prosecutors from the profession lack clarity and precision. Assessment of the professional performance of judges and prosecutors is over-centralised. Assessment criteria applied by the inspectors need to guarantee judicial independence in practice[11].

In the polarised atmosphere that followed the adoption of the constitutional amendments and relevant legislation by parliament, the presidents and members of the high courts voiced criticism of the judicial reforms. Independent associations of judges and prosecutors expressed concern about the reforms, notably with regard to the independence of the judiciary. Some Bar Associations also expressed concern.

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[11] In April 2011 the High Council introduced a new assessment system and criteria aimed at providing transparency of the process, guaranteeing judicial independence and avoiding improper interference with the judges' and prosecutors' private lives. There is yet no track record of implementation of these new provisions.

The Semdinli case is still pending (*See the chapter on the civilian oversight of the security forces*). In April, the current High Council reinstated the civilian prosecutor, previously in charge of the case, into the profession. The dismissal of this prosecutor in 2006 had raised questions about the independence of the judiciary[12].

With regard to *impartiality*, a Law on the Constitutional Court was adopted in March 2011. The government consulted the Venice Commission of the Council of Europe. This law, together with the constitutional amendments approved by referendum on 12 September 2010, enlarged the normal membership of the Court. This has reduced the relative weight of high courts' representatives and made the Constitutional Court more representative of the legal community and society at large. Under the old system all members of the Constitutional Court were ultimately selected and appointed by the President of the Republic. Now three members (i.e. approximately 18% of the membership) are elected by the Turkish Grand National Assembly.

The powers of the Constitutional Court have been extended by introducing the individual application procedure. Anyone who claims that any of his or her fundamental rights and freedoms guaranteed by the Constitution has been violated by the public authorities can apply to the Constitutional Court, provided he or she has exhausted all ordinary legal remedies. Such individual applications reinforce the right of each individual to be heard by an independent and impartial tribunal enshrined in the Turkish Constitution.

However, there is currently a strict representation *ratio* for various bodies in the membership of the Court. As a consequence, the Constitutional Court is insufficiently representative of the Turkish legal community as a whole and still over-dominated by the high courts. The influence of the Grand National Assembly over the composition of the Constitutional Court is also inadequate, in terms of both the number of members it elects and the choice of eligible candidates. The current election process in the Assembly[13] does not fully guarantee the Court's political impartiality. At the same time, the President of the Republic plays an over-dominant role in the appointment process.

Judges and prosecutors or members of a body nominating candidates for members of the Constitutional Court can cast as many votes as the number of candidates for full and substitute members to be elected. In this system imposed by a decision of the Constitutional Court itself, candidates who are voted by the majority could take all the seats, thus excluding those supported by voters from a minority. The process of selecting the Bar candidates does not ensure that the list of candidates is adequately representative of the overall membership of the Turkish Bars, while at the same time not completely dominated by the large metropolitan Bars. Finally, the presence of two military members of the Constitutional Court is questionable, as constitutional jurisprudence in a democratic system is a civilian matter.

Practical arrangements at courthouses and during trials regarding judges, prosecutors and the defence do not guarantee that the principle of equality of arms is respected or is perceived to be. This continues to cloud the perception of the impartiality of judges.

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12 The civilian prosecutor in this case published the indictment in early 2006. It included accusations against high-ranking military commanders. The General Staff criticised the indictment and urged those bearing constitutional responsibility to take action. The then High Council took the dismissal decision in April 2006.

13 There are three voting rounds in parliament. In the third, the candidates are elected by simple majority.

Senior members of the judiciary and military made statements that could put the impartiality of the judiciary at risk in key cases.

With regard to the *efficiency* of the judiciary, the Laws on the Court of Cassation and the Council of State were amended in order to tackle their large and increasing backlog of cases. More chambers have been established, working methods modified and a large number of judges and prosecutors appointed. The appointment procedure conducted by the High Council was transparent: the number of votes received by each judge and the procedure followed during the appointment process were published on the website of the High Council.

Legislation was adopted in March 2011 to reduce the workload of first-instance courts. The main aim is to prevent cases from entering the court system, among other things by decriminalising some offences which are now sanctioned by administrative fines and also by introducing legal fees for applicants to Regional Courts of Appeal and to the Court of Cassation and transferring powers to issue certificates of inheritance from courts to public notaries.

The 2011 budget for the judiciary increased to approximately TL 6,1 billion (1.81% of the state budget) from TL 4,7 billion in 2010 (0.55% of GDP).

However, neither an overall common strategic framework nor reliable indicators and benchmarks have been established by the Ministry of Justice and the High Council for Judges and Prosecutors to assess the performance of courts and of the judicial system as a whole. Such a framework, indicators and benchmarks would allow the authorities responsible to assess the human and material resources needed to address the backlog of old cases and the influx of new ones and would provide the basis for optimum allocation of resources and rationalisation of the court network.

The current fragmentation of the Turkish courts, which each have a separate registry and which are not connected with each other even when they are located in the same courthouse, prevents efficient use of the available resources. The regional courts of appeal have not been established yet. By law, they should have been in operation by June 2007. The number of vacancies for judges and prosecutors equals roughly a third of the current judicial staff.

The Ministry and the High Council have yet to develop benchmarks to monitor and assess the duration of court proceedings and improve the efficiency and effectiveness of the judicial system. The backlog of pending cases at the Turkish courts is increasing and Turkey has a large backlog of pending serious criminal cases. In particular, and as regards first instance courts, there were approximately 1.4 million pending criminal cases at the end of 2010, up from 1.2 million at the end of 2009. Similarly, the pending civil cases were 1.1 million at the end of 2010, up from 1 million at the end of 2009, while those at administrative courts reached 200,000 at the end of 2010, an increase of 40,000 as compared to those at the end of 2009.

Special attention needs to be paid to the duration of cases involving pre-trial detention, by giving them priority and ensuring that the duration of the trial is kept to the minimum compatible with the quality of the judicial process and respect of the rights of the defendant. Arrest-related articles of the Code on Criminal Procedures (CPC) have been used, often extensively, in a way that might have the same effect as punitive measures, whereas alternatives to arrest or detention are under-used. A 2005 amendment to the CPC limiting the

detention period entered into force at the end of 2010, resulting in the release of a number of prisoners.

Pre-trial detention is not limited to circumstances where it is strictly necessary in the public interest. In some terror-related cases, defendants and their lawyers have not been permitted access to incriminating evidence early in the proceedings[14]. Frequent use of arrest instead of judicial supervision, leaks of information, evidence or statements, limited access to files, failure to give detailed grounds for detention decisions and revision of such decisions raised concerns. Finally, no authoritative information has been made available from either the prosecution offices or the courts on all these issues of wide public interest. Despite preparatory work conducted by both the High Council and the Justice Academy, spokespersons at prosecution offices or at courts are not yet operational.

There is a need to improve the work of the police and the gendarmerie together with the working relationship between the police, gendarmerie and judiciary in order to address concerns raised during investigations in some high-profile cases. A Regulation on the judicial police, as provided for under Article 167 of the CPC, was adopted in 2005. It came into force on 1 June 2005 together with the CPC but has yet to be implemented. Hence, judicial police units attached to prosecution offices have yet to be established. As a result, prosecutors currently rely on judicial police units operating under the hierarchical control of the Ministry of the Interior.

Mediation is not effectively implemented and judges, prosecutors and lawyers are not trained for the task. The court experts' system does not provide for official lists of experts and fees. Nor does it set deadlines for submitting experts' opinions or make court experts subject to cross-examination. The process of transferring forensic medical examinations to State hospitals or health centres has been slow and has yet to be completed. The backlog of the Forensic Medicine Institute leads to delays in judicial proceedings. Cross-examination in criminal trials is not fully implemented.

A large number of measures in the *judicial reform strategy* adopted by the government in August 2009 have been implemented by the constitutional amendments and ensuing legislation. There is a need to review the existing strategy in a transparent and inclusive fashion, so that the revised strategy will be owned by the Turkish legal community and the wider public.

*Overall*, progress has been made in the area of the judiciary. The adoption of legislation on the High Council of Judges and Prosecutors and on the Constitutional Court marks progress in the independence and impartiality of the judiciary. Steps have also been taken to improve the efficiency of the judiciary and address the increasing backlog of the courts. However, further steps are needed on the independence, impartiality and efficiency of the judiciary, including the criminal justice system and the large backlog of pending serious criminal cases. The Minister can veto the launching of disciplinary investigations concerning judges and prosecutors by the High Council. Judicial proceedings need to be made transparent and courts and prosecution offices need to inform stakeholders and the public at large on issues of public

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14 As a rule, defendants and their lawyers should have access to documents pointing to their innocence or guilt early in the proceedings. Limitations to this right must be justified by the need to protect a specific public interest and be allowed by a judge's decision.

interest. The upcoming review of the judicial reform strategy needs to be carried out with the participation of all stakeholders, the Turkish legal community and civil society.

*Anti-corruption policy (see also Chapter 23 – Judiciary and fundamental rights)*

In line with the 2010-2014 Strategy and Action Plan[15], an Executive Committee for Increasing Transparency and Fighting Corruption[16] has coordinated working groups preparing proposals on 28 corruption-related issues. The Committee of Ministers on anti-corruption policy approved all the proposals. However, there was no increase in the strength or independence of institutions involved in the fight against corruption, which are not sufficiently staffed. Participation by civil society, particularly in the Executive Committee and in implementing the strategy, needs to be strengthened.

Turkey has implemented 19 of the 21 recommendations made in the 2005 first and second evaluation reports by the Group of States against Corruption (GRECO). There has been no progress in limiting the immunities of Members of Parliament or of senior public officials in corruption-related cases and establishing objective criteria setting the conditions under which their immunity could be lifted. Two major sets of GRECO recommendations on "Incrimination" and "Transparency of Party Funding" remain to be implemented after the third evaluation round adopted in March 2010.

Legislation on political parties imposes some restrictions on the amount and nature of donations parties may receive. However, there has been no progress concerning the transparency of financing political parties. Auditing of political parties remains weak and there is no legal framework for auditing election campaigns or the financing of individual candidates. There is no limit on general party and campaign-related spending. In particular, the legislation contains no specific provisions on campaign financing. Parties declare their campaign-related income and expenditure in their general financial statements as part of their annual report to the Constitutional Court. The Constitutional Court itself focuses primarily on compliance with reporting requirements and with parties' internal regulations. It does not verify the data and source documents submitted or review them for undisclosed income and expenditure.

5928 civil servants working for central and local government received training on ethics between October 2010 and July 2011. However, no progress has been made on extending codes of ethics to academics, military personnel or the judiciary.

The Law on the Turkish Court of Accounts (TCA) adopted in December 2010 should significantly strengthen the transparency and accountability of public administration. However, the exclusion of the Foundation for Strengthening the Armed Forces from the audit mandate of the TCA is a major shortcoming of the revised Law on the TCA (*See section on civilian oversight of security forces*). There is no administrative act to freeze suspicious assets.

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15 The government adopted a 2010-2014 strategy for enhancing transparency and strengthening the fight against corruption in February 2010.

16 The Executive Committee for Increasing Transparency and Fighting Corruption is made up of representatives of public institutions, trade unions and the Turkish Union of Chambers and Stock Exchanges (TOBB). Its task is to form further anti-corruption strategies and monitor implementation. The Prime Ministerial Inspection Board has been appointed with the task of providing technical support and secretariat services to the Executive Committee.

No steps have been taken to build up a track record of investigations, indictments or convictions related to corruption cases.

As regards the investigation into the charity Deniz Feneri concerning a fraud case in Germany which started in 2009, the former head of the Radio and Television Supreme Council (RTÜK) and four senior executives of the television network Kanal 7 were detained. No indictment has been submitted to the courts yet. Changes to the prosecutorial team investigating the case raised concerns.

*Overall*, limited progress has been made on implementing the strategy and the action plan to combat corruption. Effective implementation of the strategy is necessary to reduce corruption which remains prevalent in many areas. The lack of transparency relating to political party financing and the scope of immunities remain major shortcomings. Greater political support for strengthening the legislative framework to fight corruption and the measures taken to implement it is needed. Turkey needs to build up a track record of investigations, indictments and convictions.

## 2.2. Human rights and the protection of minorities *(see also chapter 23 - Judiciary & fundamental rights)*

*Observance of international human rights law*

As for ratification of **international human rights instruments**, parliament passed legislation to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in November 2010. Turkey ratified the Optional Protocol to the UN Convention against Torture (OPCAT) in September 2011. Ratification of three additional Protocols to the European Convention on Human Rights (ECHR)[17] is still pending.

During the reporting period, the **European Court of Human Rights** (ECtHR) delivered a total of 418 judgments finding that Turkey had violated rights guaranteed by the ECHR. The number of new applications to the ECtHR went up for the fifth consecutive year. Since October 2010, a total of 7,764 new applications have been made to the ECtHR. Most of them concern the right to a fair trial and protection of property rights. In September 2011, 18,432 applications regarding Turkey were pending before the ECtHR. Turkey has abided by the majority of ECtHR rulings, including payment of compensation totalling € 24.5 million in 2010. Some rulings have not been followed up by Turkey for several years[18]. The government's announcement that it would address these issues was not followed through.

In the *Cyprus v. Turkey* case, the issues of missing persons and restrictions on the property rights of Greek Cypriots displaced or living permanently in the northern part of Cyprus remain pending. In a number of other cases, including the *Xenides-Arestis v. Turkey*, the *Demades v. Turkey*, the *Varnava and Others v. Turkey* cases, Turkey has yet to fully execute the decision, including paying the just satisfaction awarded by the ECtHR to the applicants.

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17 Protocols 4, 7 and 12.

18 Non-implementation of the Hulki Güneş, Göçmen and Söylemez judgments has resulted in the defendants being deprived of liberty for several years without due process of law. A legislative amendment is required to remedy this situation. Furthermore, Turkey has not adopted legal measures to prevent repetitive prosecution and conviction of conscientious objectors. Other issues awaiting legislative measures by Turkey concern control of the activities of security forces, effective remedies against abuse, restrictions on freedom of expression and excessive length of pre-trial detention.

Following the Grand Chamber Decision of 5 March 2010 on the *Demopoulos v. Turkey* case, around 1500 applications from Greek Cypriot owners have been lodged with the Immovable Property Commission (IPC). So far, overall around 200 cases have been concluded, mainly by friendly settlements.

Regarding **promotion and enforcement of human rights**, the government has submitted draft legislation on the Ombudsman to parliament (*See section on public administration*).

Public officials, judges, public prosecutors and police officers received training on human rights. A Department of Human Rights has been established within the Ministry of Justice to follow up ongoing cases before the ECtHR and the execution of judgements.

The Human Rights Investigation Committee of parliament received nearly 1500 petitions since October 2010, most of which concerned judicial review and problems related to prisons. It adopted 7 reports since October 2010 and established a sub-committee to probe into the fate of people allegedly disappeared under detention, mainly in the Southeast of the country and in the aftermath of the 1980 military coup.

However, human rights institutions in line with the UN Paris principles, in particular as regards their independence and functional autonomy, have yet to be established. The draft Law establishing the Turkish National Human Rights Institution (NHRI) submitted to parliament in February 2010 does not comply fully with these principles. It is important that the provisions on the mandate, core functions, membership, staffing and funding of the NHRI cannot be amended by implementing legislation, but are set out in law. The NHRI's accountability to the Prime Minister and appointment of its members by the Council of Ministers are not in line with the Paris principles. The funding provisions in the draft law do not ensure that the budget comes from an autonomous source. Requirements for pluralism and gender balance are not explicitly included in the rules on recruitment of staff. The draft law does not specify that there is no restriction on the powers of the NHRI to examine issues arising from any part of the State or the private sector. Greater cooperation with, and involvement of, civil society has yet to be reflected in the draft.

Criminal proceedings were launched against many *human rights defenders*, with much use made of terrorism-related articles of Turkish legislation. The wide definition of terrorism under the Anti-Terror Law (*See the sections on the situation in the south-east and on freedom of expression*) was not revised and remains a cause for serious concern.

*Overall*, some progress was made on observance of international human rights law, notably through the ratification of the OPCAT. However, a number of reforms have been outstanding for several years. Legislation on human rights institutions needs to be brought fully into line with UN principles.

*Civil and political rights*

The government pursued its efforts to ensure compliance with legal safeguards to prevent **torture and ill-treatment** and ratified the OPCAT in September 2011. The latter provides for establishment of a national mechanism to prevent torture within one year and regular reports on measures to implement the Protocol (*See the section on observance of international human rights law*).

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its fifth periodic visit to Turkey[19]. The CPT noted a downward trend in both the incidence and severity of ill-treatment by law enforcement officials.

Training courses were given to health personnel, judges and prosecutors on effective investigation and documentation of torture and ill-treatment cases with a view to effective implementation of the Istanbul Protocol on the investigation of torture and ill-treatment in Turkey.

However, law enforcement bodies continued in some cases to apply disproportionate force. Civil society organisations reported disproportionate use of firearms by security forces, resulting in deaths. The CPT's report on its fifth periodic visit to Turkey states that a number of credible allegations of physical ill-treatment were received, which concerned mainly excessive use of force during arrest. With regard to the conditions of immigration detainees, major shortcomings were found in several of the detention centres visited, including severe overcrowding, dilapidated conditions, limited access to natural light, poor hygiene and lack of outdoor exercise.

Law enforcement bodies frequently launched counter-cases against persons who alleged torture or ill-treatment. Such proceedings may deter complaints. In many instances such cases launched by security forces are given priority by the courts.

Under a tripartite protocol which is still in force between the Ministries of Health, Justice and the Interior, law enforcement officers are sometimes present during medical examinations on prisoners.

Efforts to *fight impunity* for human rights violations have not been sufficient. As noted by the ECtHR, criminal proceedings have still not been finalised against members of the security forces who took part in an operation at Diyarbakir prison on 24 September 1996, which led to the death of ten prisoners and injury of six. Consistent lack of thorough independent investigations into alleged extrajudicial killings by security and law enforcement officers persists. The case against an Istanbul police officer regarding the killing of a Nigerian asylum seeker has not advanced. There is still no independent police complaints mechanism. Administrative investigations into allegations of torture or ill-treatment continue to be carried out by fellow police officers, putting at risk the impartiality of the investigation.

Law enforcement officers found guilty of torture, ill-treatment or fatal shootings received short or suspended sentences. Prosecutions of allegations of torture are often conducted under penal code provisions[20] allowing lighter sentences or the possibility of imposing a suspended sentence.

Cases of ill-treatment, unexplained deaths, torture and the lack of fair trials within the military during military service have been reported. In April, the ECtHR found Turkey in violation of the ECHR with regard to the right to a fair trial in one case before the supreme military

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19 http://www.cpt.coe.int/documents/tur/2011-13-inf-eng.htm.

20 Articles 256 ("excessive use of force") or 86 ("intentional injury") of the Turkish Penal Code are often used to issue lighter sentences instead of Articles 94 ("torture") or 95 ("aggravated torture due to circumstances") which stipulate heavier sentences.

administrative court.[21] Several trials are in progress concerning allegations of ill-treatment of conscientious objectors in military prisons.

*Overall*, there has been little progress in practice, although ratification of the OPCAT is a significant step. The positive trend on prevention of torture and ill-treatment continued. However, disproportionate use of force by law enforcement officials continued to be a concern, particularly outside official places of detention. Reports of torture or ill-treatment in prisons increased, especially in south-eastern provinces. There has been no progress on tackling impunity. There is a significant backlog of judicial proceedings.

Implementation of the **prison** reform programme continued.

The case management model developed by the Ministry of Justice to improve rehabilitation services is in operation in 4 juvenile prisons.

An amendment to the Code on Criminal Procedures (CPC) entered into force at the end of 2010, limiting the period which can be spent in custody before the final sentencing. This could reduce the prison population.

Architectural changes to some high-security prisons enabled more communal activities.

In terms of access to healthcare, a commission has been established by the Ministry of Justice to improve conditions in prison wards at certain hospitals in line with human and patient rights. By February 2011 the number of rehabilitation centres for convicts and detainees had increased to five.

The number of judgments including probation sentences increased[22].

However, the prison population continued to increase[23]. This leads to overcrowding, puts pressure on staff and other resources and limits the possibility of using newly built prisons to improve conditions for the inmates. One major factor continuing to contribute to over-population in prisons is the length of time it can take to complete a trial and impose a sentence in criminal cases. Some 47% of the prison population has not received a final sentence (*See section on the judiciary*).

The prison system does not have adequate resources, notably with regard to the number of prison staff and their qualifications, despite the appointment of an additional 4,929 staff in 2010 and the existence of four training centres.

The number of juvenile correctional facilities is insufficient, notwithstanding the launch of juvenile prison-building work by the Ministry of Justice. Children are not fully separated from adults in all prisons. This is especially the case with girls[24] (*See section on children's rights*).

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21 In April the ECtHR found Turkey in violation of Article 5.1 of the ECHR in the Pulatlı vs. Turkey case. The ECtHR held, unanimously, that there had been a violation of Article 5 § 1 of the ECHR and that these incidents are systemic problems deriving from disciplinary sanctions imposed by higher-ranking officers for breaches of military discipline, which are not subject to judicial review.

22 The probation system dealt with 104,622 persons nationwide in 2010 and the number of judgments including probation sentences increased by 33% from 63,449 in April 2010 to 84,526 in April 2011.

23 In April, there were 123,916 prisoners in penitentiaries; 69,648 of them had been convicted but there were 35,084 inmates whose cases were pending.

24 The number of children in prison is 506.

The standards for monitoring national prisons are still not in line with those of the UN. Prison monitoring boards are not effective and there is not a board for each individual prison. They have neither the right nor the resources to carry out unannounced visits. In some provinces provincial human rights boards carry out random visits, but their reports have not led to changes in practice.

Delays in the work of the Forensic Medicine Institute can lead to damaging delays in trials of sick prisoners. There are serious problems with transferring prisoners to hospitals for treatment. Hospitals regularly used by prisons often have no secure rooms. Complaints were received about medical examinations conducted in the presence of security staff and of prisoners being handcuffed during medical consultations in civilian hospitals.

The authorities have yet to adopt a general statement of principles on restrictions that can be imposed on prisoners' rights, incorporating the principles of the ECHR. Newspapers, magazines and books continue to be forbidden in prisons. The practice adopted in prisons in relation to open and closed visits is a concern. There are still reports of restrictions on use of the Kurdish language in prisons, during visits and exchanges of letters. Practice varies between prison administrations. A complete overhaul of the complaints system in prisons to make it genuinely available to all prisoners should be carried out, in accordance with the OPCAT.

The judicial case focusing on the incidents at Bayrampaşa prison during the "Return to Life" Operation in 2000, when the police violently ended the hunger strike of prisoners who had protested against their transfer to F-type prisons and during which twelve prisoners died, is still pending. In the meantime the ECtHR admitted a case about this operation.

*Overall,* the increasing prison population is leading to serious overcrowding, which is hampering attempts to improve detention conditions. A complete overhaul of the complaints system in prisons is needed. Implementation of the OPCAT should help tackle some problems. Close attention should be paid to making sure that new arrangements for medical services meet the requirements of the prison environment. An urgent review of the system for dealing with juveniles is needed to minimise the number in prison and the time they spend there and make sure that detention conditions meet the needs of children.

There have been limited improvements in **access to justice**. The efforts of Bar associations improved citizens' awareness of their rights in terms of access to justice.

However, problems remained in rural areas and for disadvantaged groups. A large proportion of prison inmates, including women and juveniles, have had only limited access to legal aid. Prison inmates are not always aware that legal aid is available. In domestic violence cases, the documentation requested in order to benefit from legal aid has, in practice, delayed protection of victims.

Financial resources allocated for legal aid are not adequate. Lawyer's fees are very low and, in any case, not comparable with the fees paid by defendants in ordinary cases.

Public awareness of legal aid is limited. The Ministry of Justice, the High Council of Judges and Prosecutors and the courts do not publish information relating to judicial proceedings. The courts do not provide parties with forms or models to file petitions and have no information desks. Defendants continue misguidedly to believe that requesting a lawyer implies guilt.

*Overall,* limited progress has been made on access to justice. The legal aid provided is of inadequate scope and quality. There is no effective monitoring mechanism that would remedy long-standing problems.

As regards **freedom of expression**, the media and public continued debating openly and freely a wide range of topics perceived as sensitive, such as the Kurdish issue, minority rights, the Armenian issue and the role of the military. Opposition views are regularly expressed.

Following the review of the legal framework on freedom of expression by the Ministry of Justice, a draft law has been submitted to parliament with the aim of changing a limited number of articles of the Turkish Criminal Code, including Articles 285 and 288, which are often used to start procedures against journalists. Few cases have been initiated on the basis of Article 301 of the Turkish Criminal Code (TCC), after it was amended in May 2008.

However, the high number of violations of freedom of expression raises serious concerns. Freedom of the media was restricted in practice. The imprisonment of journalists, and the confiscation of an unpublished manuscript in connection with the Ergenekon investigation, fuelled these concerns. A large number of journalists remain in detention.

A large number of cases were launched against writers and journalists writing on the Kurdish issue. Pressure on newspapers which report on the Kurdish question or publish in Kurdish has continued. Several left-wing and Kurdish journalists were convicted of terrorism propaganda (*See section on the situation in the south-east*).

A large number of violations of freedom of expression by Turkey were submitted to the ECtHR. In order to comply with the rulings of the ECtHR, legal amendments need to be introduced.[25]

Turkey's criminal legislation remains highly problematic; it is open to disproportionate use to limit freedom of expression. The Press Law and the Law on the protection of Atatürk are also used to restrict freedom of expression. A number of articles of the TCC require revision, such as Article 125 which criminalises defamation, Articles 214, 215, 216 and 220 on protection of public order, Article 226 which outlaws publication or broadcasting of obscene material, Article 285 which protects the confidentiality of investigations, Article 288 which outlaws attempts to influence the judiciary, Article 314 on membership of an armed organisation and Article 318 which makes it an offence to discourage people from performing military service. Restrictions on freedom of expression stemming from a wide definition of terrorism under the Anti-Terror Law continue to be a cause for concern. In particular, Articles 6 and 7 of this law need to be revised.

Another important problem is the lack of proportionality in the interpretation and application of the existing legal provisions by courts and prosecutors, which leads to violations of freedom of expression. The role of prosecutors, including special "press prosecutors", in initiating criminal proceedings affecting freedom of expression without due restraint is particularly important and raises concerns. A large number of draft indictments on grounds of article 301 of the TCC are still submitted by prosecutors to the Minister of Justice for examination, for most of which permission to prosecute is denied.

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25 One example is the *Ürper and others v. Turkey* case, where the ECtHR ruled that Turkey should revise Article 6(5) of the Anti-Terror Law.

As highlighted in a report of the Council of Europe published in July 2011, the interpretation of the concept of "incitement to violence" is not compliant with the case-law of the European Court of Human Rights. No defences of truth and public interest exist in the Turkish legal system. Other issues hampering the right to freedom of expression are the excessive length of criminal proceedings and remands in custody and problems concerning defendants' access to evidence against them pending trial. All of this has a chilling effect on freedom of expression in Turkey and has led to wide self-censorship in Turkish media, as do the recurring court cases launched against the press by high-level government and State officials and by the military.

A decision by the Turkish Constitutional Court of 2 May 2011 invalidated Article 26 of the Press Act. Once this decision will have entered into force in July 2012, prosecutors will no longer be bound to certain time restraints if they want to file a case following a publication in a periodical. Currently, the maximum period for filing a case is two months after publication for dailies and four months for weeklies.

The court case on the tax fine imposed in 2009 against the Dogan Media Group, a well-known critic the government, continued. In general, numerous and high fines were imposed on the media. The satiric Harakiri magazine was forced to cease publication after its second issue, following a fine of TL 150,000 imposed by the Prime Ministerial Board for the Protection of Children from Harmful Publications. The Board, which reads books at the request of prosecutors and follows periodicals in Turkey to evaluate them for possible obscenity, has been heavily criticised as regards its composition and the scope of its mandate.

In March 2011, a first-instance court agreed with the Court of Cassation and fined writer Orhan Pamuk in a civil procedure on the grounds that his 2005 remarks on the killing of Armenians and Kurds had insulted the plaintiffs as Turkish citizens.

Regarding hate speech, the Council of Europe recommendation encouraging Turkey and the media to adopt a code of ethics on respect for religious minorities has not been implemented. There is a need for new legislation which would allow effective prosecution of incitement to hatred, including by the media.

The new Law on the establishment and broadcasting principles of radio and TV stations brings only partial improvement as regards the interpretation of certain rules on broadcasting bans and sanctions imposed on broadcasters. The potential fines have been substantially increased. At the beginning of 2011, based on the previous law, the Supreme Board of Radio and Television (RTÜK) issued warnings to television stations and imposed fines on them for failing to respect the privacy of historical characters[26], discussions on homosexuality[27] or homosexual scenes in films or series[28] *(See Chapter 10 – Information society and media).*

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26 In January 2011, the RTÜK warned Show TV for portraying the country's Ottoman-era sultans as drinkers and womanisers in the popular TV series the "Magnificent Century".

27 In January 2011, Habertürk was fined for "showing homosexuality as normal, thus violating the Turkish family structure".

28 In January 2011, ATV was warned for showing two men in bed in a TV series, thus violating the Turkish family structure. In March, the RTÜK launched an administrative procedure against Digitürk, which aired "Sex and the City 2" on one of its coded channels, for showing a homosexual wedding scene.

There are still frequent website bans of disproportionate scope and duration. Since May 2009 the Telecommunications Communication Presidency (TİB) has published no statistics on banned sites. A case has been brought against the TİB for not supplying statistics on the banned sites, as this is not in line with the Law on the right to information. Court cases are also ongoing against the You Tube video-sharing website and other web portals. The Law on the Internet, which limits freedom of expression and restricts citizens' right to access to information, needs to be revised. In April 2011 TİB, basing itself on the Internet Law, sent a letter to hosting companies asking them to cancel websites which included certain potentially provocative words. This raised heavy criticism, to which TIB responded that the list of words was intended to assist hosting companies identify allegedly illicit web content.

Reacting to strong criticism, the Information and Communication Technologies Authority (ICTA) amended its February 2011 regulation on the principles and procedures for safe usage of the Internet. The revised version, which was adopted in August 2011, responds to a number of concerns, in particular by making the Internet filters explicitly optional. After a testing phase ending in November 2011 the system will be available to all users. Implementation in line with European standards will be essential.

*Overall*, open debate, including on issues perceived as sensitive, continued. However, in practice, freedom of expression is undermined by the high number of legal cases and investigations against journalists, writers, academics and human rights defenders and undue pressure on the media, which raises serious concerns. The present legislation does not sufficiently guarantee freedom of expression in line with the ECHR and ECtHR case law and permits restrictive interpretation by the judiciary. Frequent website bans are another cause for serious concern. Turkey's legal and judicial practices, legislation, criminal procedures and political responses are obstacles to the free exchange of information and ideas.

As regards **freedom of assembly**, there were positive developments. *Newroz* (New Year) ceremonies in the South East and 1 May demonstrations took place in a generally peaceful atmosphere. This was also the case for demonstrations, *inter alia* against restrictions on alcohol advertising and consumption, on judicial reform and on the detention of suspects in the alleged coup trials. Several activities, including *Armenian Genocide Commemoration Day*, organised by intellectuals and civil society representatives to commemorate the 1915 events also proceeded peacefully.

However, demonstrations in the south-east of the country and in other provinces related to the Kurdish issue, students' rights, the activities of the Higher Education Board (YÖK) and trade union rights were marred by violence, including incidents of excessive force used by the security forces. Allegations against members of the security forces for use of excessive force were rarely prosecuted or investigated properly *(See section on impunity)*.

Turkey still needs to apply constitutional provisions guaranteeing the right to hold demonstrations. Many court cases are in progress on charges of opposing the Law on meetings and demonstrations. This law is currently being revised by the Ministry of the Interior. Problems persist with implementation of the Law on the duties and legal powers of the police, especially in the south-east. Civil society organisations and human rights defenders often face prosecution and legal proceedings on charges of terrorist propaganda during demonstrations and protest meetings.

Turkey's legislation on **freedom of association** is broadly in line with EU standards. However, no moves have been launched to meet the need for changes to the legal framework,

including the Constitution, with regard to the closure of political parties. There are many instances of restrictive interpretation of the existing legislation.

The inclusion of civil society organisations (CSOs) in policy processes, while still in a nascent stage, has advanced. CSOs continued to face closure cases plus disproportionate administrative checks and fines. Membership in associations continues to require a Turkish residency permit and foreign CSOs are subject to specific regulations.

Legislative and bureaucratic obstacles impeding the financial sustainability of CSOs persist, e.g. with respect to the collection of domestic and international aid, to obtaining public benefit status for associations and tax exemptions for foundations, etc. The lack of simplified rules creates difficulties for small or medium-sized associations.

The judicial investigation into the Istanbul branch of the Human Rights Association has been pending for two years. The Labour Court ordered the closure of Yargı Sen (the trade union of judges and public prosecutors), established in early 2011, based on the argument that its establishment is contrary to domestic legislation. However, this legal basis needs to be updated in line with the 2010 constitutional amendments and the international obligations of Turkey. The trade union appealed to the Court of Cassation.

More restrictive legislation applied to foreign associations, with the Ministry of the Interior (MoI) having to consult the Ministry of Foreign Affairs (MFA) to allow the opening of a representation. Some foreign civil society organisations were rejected by or received no reply from the MoI without being given specific reasons.

The case against the party leaders and executive members of the Socialist Democracy Party and the Social Freedom Platform is pending. Some of them are still detained for alleged links to the Revolutionary HQ, an illegal organisation.

In December 2010, the ECtHR found Turkey in violation of the rights to freedom of assembly and association in connection with the closure of the HADEP party by the Constitutional Court in March 2003[29].

*Overall*, as regards freedom of assembly, there has been progress on the ground. However, demonstrations in the south-east of the country and in other provinces related to the Kurdish issue, students' rights, the activities of the higher education supervisory board (YÖK) and trade union rights were marred by disproportionate use of force. Legislation on freedom of association is broadly in line with EU standards. However, disproportionate controls and restrictive interpretation of the law remain; funding rules for CSOs remain restrictive. There were no developments as regards amendment of the legislation on the closure of political parties.

Concerning **freedom of thought, conscience and religion**, freedom of worship continues to be generally respected. Ecumenical Patriarch Bartholomew celebrated in August, for the second time after almost nine decades, the Divine Liturgy of the Dormition of Theotokos at

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29 Under Article 69(9) of the Constitution, the Constitutional Court banned 46 HADEP members and leaders from becoming founder members, ordinary members, leaders or auditors of any other political party for a period of five years. The Constitutional Court also ordered the transfer of HADEP's property to the Treasury. The decision of the Constitutional Court became final following its publication in the Official Gazette on 19 July 2003.

the Soumela monastery in the Black Sea province of Trabzon. In September the second religious service since 1915 was held at the Armenian Holy Cross church on the Akhdamar island in lake Van. A Protestant church was officially opened in June in the city of Van in Eastern Turkey. The Turkish authorities, including a Deputy Prime Minister, held a number of meetings with the religious leaders of non-Muslim communities, including a visit to the Ecumenical Patriarchate, the first visit by a high-ranking official of the Patriarchate since the 1950s.

Following seven workshops held in the context of the 2009 Alevi opening, a final report was issued in March 2011. The Ministry of National Education has prepared new religious education textbooks containing information on the Alevi faith, too. These are to be used as of the 2011-2012 school year. A small number of municipal councils have recognised *de facto* Cem houses as places of worship. The government expropriated Madimak Hotel[30] in Sivas. Alevis have demanded that the hotel be turned into a museum.

The 2010 ECtHR judgment in the *Özbek and others v. Turkey* case about the establishment of the Kurtuluş Protestant Church Foundation in Ankara (violation of Article 11) was implemented.

Legislation amending the February 2008 Law on foundations was adopted in August 2011. The current legal framework broadly provides for the return of properties entered in the 1936 declarations of the non-Muslim community foundations widening, thus, the scope of the 2008 Law. *(See section on property rights)*.

However, under Article 24 of the Turkish Constitution and Article 12 of the Basic Law on national education, religious culture and ethics classes remain compulsory in primary and secondary schools. A 2007 ECtHR judgment[31] regarding compulsory religious education has yet to be implemented. Exemptions from attending such classes are rare and difficult to obtain, particularly if the identity card of the applicant does not list a religion other than Islam or if the religion entry on the card is blank. No alternative classes are provided for students exempted from these classes, and there are reports that students not attending these classes have been given lower marks.

Non-Muslim communities – as organised structures of religious groups – still face problems due to their lack of legal personality. This has implications at least for their property rights, their access to justice and their ability to raise funds. The 2010 Council of Europe Venice Commission recommendations[32] in this regard have yet to be implemented.

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30 On 2 July 1993 a mob besieged the Madimak Hotel in Sivas that was hosting a Pir Sultan Abdal culture festival. The hotel was set on fire, resulting in the death of 37 people – mostly Alevi writers, poets and artists participating in the festival. In a symbolic gesture, in 2009 the Ministry of Culture started discussions to establish a cultural centre in the Madimak Hotel in memory of the victims of the 1993 events.

31 In October 2007 the ECtHR found that these classes did not just give a general overview of religions but provided specific instruction in the guiding principles of the Muslim faith, including its rites. The Court requested Turkey to bring its education system and domestic legislation into line with Article 2 of Protocol 1 to the ECHR.

32 In March 2010, the Venice Commission of the Council of Europe concluded that the fundamental right to freedom of religion, as protected by Article 9 read in conjunction with Article 11 of the ECHR, includes the possibility for religious communities to obtain legal personality.

Restrictions on the training of clergy remain. Turkish legislation does not provide for private higher religious education for individual communities and there are no such opportunities in the public education system. The Halki (Heybeliada) Greek Orthodox seminary is still closed. The Armenian Patriarchate's proposal to open a university department for the Armenian language and clergy has been pending for four years now. Syriacs can provide only informal training, outside any officially established schools.

The Ecumenical Patriarch is not free to use the ecclesiastical title 'Ecumenical' on all occasions. The Venice Commission's 2010 conclusion that any interference with this right would constitute a violation of the autonomy of the Orthodox Church under Article 9 of the ECHR has yet to be implemented. As regards participation in religious elections held in the patriarchate, Turkish and foreign nationals should be treated equally in terms of their ability to exercise their right to freedom of religion by participating in the life of organised religious communities in accordance with the ECHR and the case law of the ECtHR.

Personal documents, such as identity cards, include information on religion, leaving potential for discriminatory practices. There have been reports of harassment by local officials of persons who converted from Islam to another religion and sought to amend their ID cards. Some non-Muslims maintained that listing religious affiliation on their identity cards exposed them to discrimination. The 2010 *Sinan Isik v. Turkey* ECtHR judgment, which ruled that indication of religious affiliation on identity cards is in breach of the Convention, has yet to be implemented.

Alevi places of worship are not recognised and Alevis often experience difficulties in opening them. Two refusals by the administration to approve places of worship were taken to courts, which upheld the decisions. One case is now pending before the ECtHR, after exhausting all domestic remedies.

Non-Muslim religious communities report frequent discrimination, administrative uncertainty and numerous obstacles to establishing or continuing to use places of worship. Implementation of zoning legislation by local authorities differs from province to province. This results in often arbitrary refusals to issue construction permits for places of worship. Since the relevant legislation was amended in 2003[33], there has been no construction or designation of a plot for a new Protestant church or a Jehovah's Witness Kingdom Hall. In Mersin a court ordered the closure of a Kingdom Hall that was considered to have violated the zoning law. The case has been taken to the ECtHR.

Jehovah's witnesses have been refused exemption from property taxes in Istanbul and Ankara. A number of court cases are pending on taxation issues. Alevis and non-Muslim religious communities have to pay electricity and water bills, whereas the State budget covers such expenses for mosques.

Missionaries are widely perceived as a threat to the integrity of the country and to the Muslim religion. A court in Silivri found two missionaries not guilty of inciting hatred or insulting Turkishness but guilty of registering personal data[34]. The court case concerning the killing of

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33 The Law on public works was amended as part of the sixth reform package, followed by a circular in September 2003 replacing the word "mosque" with the phrase "places of worship".

34 Originally filed in October 2006, this case under Article 301 of the Turkish Criminal Code accused two former Muslims who converted to Christianity, of insulting Turkishness and the Muslim religion while involved in evangelistic activities in Silivri, west of Istanbul.

three Protestants in Malatya in April 2007 continued. No clear conclusion has been reached regarding the killing of Father Santoro, a Catholic priest, in Trabzon in 2006. As regards the killing of Bishop Padovese in Iskenderun in 2010, the indictment was finalised in June 2011. The case is continuing.

The May 2010 Prime Ministerial circular instructing all relevant authorities to pay due attention to the problems of non-Muslim Turkish citizens has yet to produce tangible results. Non-Muslim religious communities reported that hate crimes continued. There have been reports of attacks against churches, synagogues and cemeteries. Anti-Semitism and hate speech in the media, including in TV series and films, have not been sanctioned.

ECtHR judgments regarding *conscientious objectors* refusing to serve in the military on religious or other grounds have yet to be implemented. No progress has been made on tackling the issue of repeated prosecution and conviction or towards introducing a civilian alternative to military service. Members of the Jehovah's Witness community in particular faced court cases for conscientious objection. On several occasions public statements on the right to object led to judicial investigations and proceedings on the grounds of discouraging the public from fulfilling military service.

*Overall*, there has been limited progress on freedom of thought, conscience and religion. The dialogue with the Alevis and with the non-Muslim religious communities continued. Members of minority religions continued to be subject to threats from extremists. A legal framework in line with the ECHR has yet to be established, so that all non-Muslim religious communities and the Alevi community can function without undue constraints.

*Economic and social rights* (*see also Chapter 19 – Social policy and employment*)

Limited progress can be noted on **women's rights and gender equality**. Efforts have been made to strike a better balance between professional and private life for civil servants, notably in the form of introducing parental benefits. The Parliamentary Committee on Equal Opportunities for Women and Men has issued a number of reports[35] on women's issues and improved its institutional capacity, including with the aid of training. Legislation was adopted in January 2011 (Law on obligations) to address the problem of bullying at work, followed by a Prime Ministerial circular in March 2011. The female participation rate in the labour market increased from 26% in 2009 to 27.6% in 2010. The gender gap in primary education at national level continued to narrow and was virtually closed. The 2011 elections increased women's participation in parliament approximately from 9% to 14% of its membership.

The dialogue with women's NGOs developed since the appointment of the new minister of family and social policies.

However, gender equality, combating violence against women, including honour killings, and early and forced marriages remain major challenges for Turkey. The constitutional amendment providing for positive discrimination in favour of women has yet to produce results.

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35 The reports issued to date cover early marriages, violence against women, bullying at work, pressure on women due to the gender of the child and traditional forms of marriage. The TGNA Committee's report on early marriages establishes a direct correlation between poverty, lack of education and early marriages. It also addresses the role of tradition and religious misperceptions.

Women's representation in politics, managerial positions in the public administration, including education[36], at governor level, in political parties or in trade unions remains generally limited, even though polls indicate wide public support for greater participation by women in politics. Research has concluded that women's low political participation cannot be attributed to voter choice or women's traditional family roles alone, but also to the insufficient support given to women in politics.

Women often work in poor conditions in unregistered and unpaid family work. Funds available to encourage women to become self-employed have been inadequate. Existing labour market measures, including training courses, need to be designed with a view to avoiding gender-based segregation of employment. Discrimination in recruitment has been reported, while, according to research, unemployment among white-collar women increased over the last year

The gender gap in secondary education has widened (*See section on children's rights*). The sustainability of girls' attendance at higher levels of education has been a challenge. Efforts to eliminate gender bias from school textbooks at all levels of education and training have yet to produce the desired results. Gender stereotyping has been perpetuated by the media.

There has been evidence that incidents of violence against women, including killings, are increasing[37]. This has been widely reported and debated. A number of women have reported that police officers tried to convince them to return home to their alleged abusers rather than help them receive protection orders, and that prosecutors and judges were slow to act on requests for protection orders or requested unnecessary evidence. Use of standard forms by the police needs to become normal practice in domestic violence cases. Further awareness-raising and training for members of the judiciary, health staff and, in particular, law enforcement officers is needed. Family courts have insufficient capacity and have been unable to assist victims in a number of cases. Court cases have usually been lengthy and preparation of forensic reports has caused delays in the judicial process. As regards domestic violence, the ECtHR judgment in the *Opuz v. Turkey* case[38] has yet to be implemented.

The Law on municipalities provides for establishing shelters for women in municipalities with a population of 50,000 or more. This provision is not being fully implemented and the number of shelters and other protective and preventive mechanisms falls well short of needs. This puts victims at risk. There is still no effective oversight of the work of shelters and of municipalities and no sanctions are laid down for municipalities which fail to provide shelters. There is no follow-up for women who are discharged from shelters or similar social services. Local services and support mechanisms for women who are victims of violence need to be strengthened.

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36 According to the report by the DG on Women's Status on the education sector, where the female employment rate is relatively high, only around 9% of the 58,835 managerial positions in schools are occupied by women. In higher education institutions, only around 5% of rectors and 15% of deans are women.

37 Official figures indicate that 83 women were killed in 2003, 164 in 2004, 317 in 2005, 663 in 2006, 1,011 in 2007, 806 in 2008 and 953 during the first seven months of 2009. Although this increase might also reflect improved collection of information, it nevertheless illustrates the challenge Turkey is facing.

38 Application No 33401/02 concerning the Turkish authorities' failure to protect the applicant and her mother from domestic violence.

Implementation of the national action plan on gender equality and violence against women is suffering from the lack of sufficient human and financial resources. Implementation of Prime Ministerial circulars also needs to be improved. Action plans and circulars are not binding and are not applied evenly throughout the country. Gender issues need to be mainstreamed in law-making and in public administration.

Several statements by public figures and judicial decisions have portrayed women as partly responsible for harassment, rape or violence due to their behaviour or dress.

Independent women's NGOs have reported that public institutions discriminate in favour of NGOs promoting conservative values. Like other NGOs, women's NGOs face financial difficulties.

*Overall*, protecting women's rights, promoting gender equality and combating violence against women remain major challenges. The legal framework guaranteeing women's rights and gender equality is broadly in place. However, further substantial efforts are needed to turn the legal framework into political, social and economic reality. Legislation needs to be implemented consistently across the country. Honour killings, early and forced marriages and domestic violence against women remain serious problems. Further training and awareness-raising on women's rights and gender equality are needed, particularly for the police.

With respect to **children's rights**, the proportion of children in pre-school education increased in 2010-2011 compared to the previous school year. The number of teachers also increased. The primary school enrolment rates (grades 1-8) increased and the gender gap has virtually closed. In secondary education (grades 9-12), the enrolment rates increased for boys from 67.5% to 72.3% and for girls from 62.2 % to 66.1 %, widening thus slightly the gender gap. Turkey signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

However, school drop-outs were a concern, especially among seasonal migrant workers' families and Roma children. There is a need to support and use fully the early warning system for children at risk of dropping out. Regional disparities remained wide for both primary and secondary school enrolment. Turkey has adopted legislation on education of children with special needs; however, there is a need to provide the resources necessary to implement this legislation fully and establish a system to oversee this implementation.

The poverty rate among children is disproportionately high. For those under the age of six, the rate stood at around 24% of all cases of poverty and at around 49% of all cases of rural poverty.

There is no effective mechanism in place to tackle domestic violence against children. Further awareness-raising is needed on children's rights, including on fighting violence against children. There are initiatives regarding children placed in institutions to support de-institutionalisation towards a community based approach; however, community based care services still remain limited and needs to be enhanced in terms of coverage and content. Conditions in full-time child-care institutions need to improve, staff trained and alternative care models promoted.

No measurable progress has been made yet in the fight against child labour. Field work is in progress on seasonal agriculture and migrant child labour. Administrative capacity in this field has been weak and there has been no nationwide monitoring and inspection system.

There is a lack of up-to-date data on the number and situation of children at work, and there is no integrated system to eradicate child labour.

As regards juvenile justice, since the June 2010 amendments to the Anti-Terror Law, the Criminal Procedure Code and other legal provisions, Turkish legislation provides that children will not be penalised on charges of committing a terror crime or being a member of a terror organisation, in the case of resisting law enforcement officials or for committing a propaganda crime by participating in demonstrations supporting terror organisations. The law also provides that the 'aggravating circumstances' provided for by the Anti-Terror Law will not apply to children and that they will be tried only in children's courts or juvenile serious crime courts. Implementation of this law is not complete.

By May 2011 a total of 20 juvenile heavy criminal courts had been established by law, of which only 11 were in operation. The total number of juvenile courts established by law was 75, of which 60 were in operation. The Child Protection Law requires that courts should be established in all 81 provinces. In provinces where no such courts exist, children are tried in courts for adults.

In most provinces, there are not yet adequate facilities for children's pre-trial detention or to make sure that children are detained separately from adults and receive proper psychological support.

Trials in juvenile courts are often long. In some cases the juvenile courts decided to postpone their judgment, to convert a prison sentence to alternative sanctions or to suspend sentences for terror-related crimes. In practice, these options were not considered if the child was re-arrested.

Some 2,500 children aged between 12 and 18 were in prison. However, imprisonment for children should be used only as a measure of last resort and for the shortest appropriate period of time. Efforts are needed to reduce the number of juveniles detained, both on remand and under sentence. There was not a closed correctional centre for juveniles in every region of the country.

*Overall*, efforts need to be stepped up in all areas, including education, combating child labour, health, administrative capacity and coordination. In general, more preventive and rehabilitation measures need to be taken for juveniles. Moreover, there is a need to establish more juvenile courts, in line with the legislation in force, and to minimise detention for children which, if strictly necessary, should take place in appropriate conditions.

As regards **socially vulnerable persons and/or persons with disabilities**, a strategy paper on accessibility and the related national action plan were adopted. However, constitutional changes allowing positive discrimination in favour of the disabled were not turned into specific measures. A national mechanism for monitoring implementation of the UN Convention on the rights of disabled persons and its optional protocol has still not been established.

Efforts to increase employment of persons with disabilities brought some success in the public sector. However, further measures are needed in both the public and private sectors, including on creating new jobs and encouraging working from home.

Lack of data and research on persons with disabilities and the mentally ill remain a barrier against informed policy-making.

Persons with disabilities faced difficulties in access to education, health, social and public services. Physical barriers to access to public buildings continued to be a problem, despite legislation in force. Further awareness-raising efforts are needed to fight prejudice against people with disabilities and to increase their participation in social and economic life. Legislation on inclusive education needs to be fully implemented. Mental health is still an area of concern. Efforts are needed to safeguard the rights of mentally ill patients and to improve conditions in certain care institutions. An independent body to monitor and inspect mental health institutions has not been established.

The principle of **anti-discrimination** is enshrined in the Constitution and in several laws. However, comprehensive anti-discrimination legislation is lacking, the current legal framework is not adequately aligned with the EU *acquis* and, in practice, discrimination is taking place against various categories of persons. Legislation establishing an anti-discrimination and equality board has not been adopted.

The government removed all references to discrimination on grounds of "sexual identity" or "sexual orientation" from the draft Law establishing an anti-discrimination and equality board. Turkey did not support a European Union-sponsored amendment to the UN Resolution on extra-judicial executions and other unlawful killings calling on all States to decriminalise homosexuality, despite the fact that homosexuality is not a criminal offence in Turkey.

Lesbian, gay, bisexual and transgender persons (LGBT) continued to suffer discrimination, intimidation and violent crimes.

There have been several cases of discrimination in the workplace, where LGBT employees and civil servants have been fired on the grounds of their sexual orientation. A number of court cases and judicial proceedings are in progress. Charges under the provisions of the Turkish Criminal Code on 'public exhibitionism' and 'offences against public morality' were still used to discriminate against LGBT people. The Law on misdemeanours was often used to impose fines on transgender persons.

Courts continued to apply the principle of 'unjust provocation' in favour of perpetrators of crimes against transsexuals and transvestites. LGBT persons and human rights defenders continued to face court cases brought by the police in response to allegations of police brutality in Ankara in May 2010. Judicial proceedings are also continuing against transgender human rights defenders who accused the police of arbitrary arrests and violence in Ankara in June 2010. In neither case have complaints brought against the police by LGBT persons resulted in court cases.

Negative stereotyping by political figures and the conservative media against LGBT persons continued.

In November 2010, an international conference organised by the Foundations of Journalists and Writers focused on the concept of the "virtuous family" as an institution based on religion and tradition and put homosexuality and incest in the same category as 'diseases' that threaten society. High-level government officials attended the final declaration by the conference.

The Turkish armed forces maintained an internal regulation which defines homosexuality as a 'psychosexual' illness and declares homosexuals unfit for military service. Conscripts who declared their homosexuality were forced to provide photographic proof. Some have undergone humiliating medical examinations.

*Overall*, efforts to improve the situation of socially vulnerable persons and/or persons with disabilities continued. However, further measures are required to increase their participation in social and economic life. Many challenges remain in the areas of labour and trade union rights and the fight against discrimination.

As regards **labour and trade union rights**, the current legal framework is not in line with EU standards and ILO conventions. Major obstacles remain for private-sector workers and public servants on the rights to organise, bargain collectively and on the right to strike. Constitutional amendments lifting some restrictions on labour rights have not yet been turned into implementing legislation. Trade union legislation has not been amended, partly because of disagreement between social partners on some key issues, such as the right to organise at the workplace and the high thresholds for entering into collective bargaining

Social dialogue mechanisms were not effectively used during the reporting period. The Economic and Social Council, which gained constitutional status following the September 2010 referendum, has not yet convened. Social partners' involvement in designing policies and legislation in the employment and social fields needs to be improved.

Problems with implementation of labour rights persisted: several cases of dismissal of workers due to trade union membership and activity were reported. Such cases have not been dealt with efficiently by the courts. The right to organise is still not recognised for groups such as students, the retired, farmers and judicial employees, whose trade unions have been sued for closure. Trade union demonstrations were often negatively perceived by the authorities and subject to restrictions and excessive use of force.

As regards **property rights**, legislation amending the 2008 Law on foundations was adopted in August 2011. This is the fourth attempt of the Turkish authorities since 2002 to restore the property rights of non-Muslim communities. The new legislation provides that non-Muslim community foundations can register in the Land Registry, under their names, immovable property entered in their 1936 declarations for which either the owner entry was left blank, or which are registered in the name of the Treasury, the Directorate-General for Foundations, municipalities and special provincial administrations, or cemeteries and fountains registered in the name of public institutions. Interested parties will have to apply for the return of properties within a twelve-month period from the entry into force of the new legislation. Finally, the market value of foundation properties currently registered with third parties will be paid. This covers properties seized and sold to third parties, and which cannot be returned to the foundations. A regulation will define implementation modalities of the new legislation.

Implementation of the 2008 Law on foundations[39] continued throughout the reporting period. By mid-July 2010, the end of the additional period granted to foundations for providing

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[39] The February 2008 Law on foundations set an initial deadline of 27 August 2009 for non-Muslim foundations to submit applications for the restitution of properties registered under figurative or fictitious names, or in the name of the Treasury or of the Directorate-General for Foundations. A total of 108 foundations submitted 1,410 applications for restitution of properties. The 27 August 2009 deadline was extended to give foundations time to submit all the documents required.

complete information, 61 of them had re-applied for registration of properties. Overall, the February 2008 Law enabled the registration of 181 properties in the name of non-Muslim community foundations.

In November 2010 the Ecumenical Patriarchate received the deeds of the Büyükada orphanage from the deeds office in Istanbul, following the ECtHR ruling in the *Ecumenical Patriarchate v. Turkey*[40] case.

In March 2011, Turkey implemented the ECtHR judgment of March 2009 on the property rights of the Kimisis Theodokou Greek Orthodox church on the island of Bozcaada (Tenedos), by transferring the property titles to the Bishop of Imvros and Tenedos.

However, implementation of the 2008 Law on foundations has suffered from delays and procedural problems. The property of merged foundations remains outside the scope of the August 2011 amendments to the Law.

The Syriac community continued to face difficulties with property and land registration. A number of court cases continued concerning both individuals and religious institutions. The Mor Gabriel Syriac Orthodox monastery court cases regarding land ownership continued throughout the reporting period. Litigation launched in parallel by State institutions and neighbouring villages raised concerns. Among other cases, following positive rulings by the local courts, the Turkish Forestry Department appealed to the Court of Cassation, which decided against the monastery and reversed the decision of the first-instance court. Judicial proceedings are continuing.

A large number of properties of the Catholic Church across the country have been confiscated by the State. The Catholic Church, like the other non-Muslim religious communities, has no legal personality. It does not have community foundations to register property and it can not establish new foundations. All the Church's properties are registered in the names of Catholic priests.

Implementation of the March 2010 recommendations of the Council of Europe Venice Commission on the protection of property rights is pending.

Problems encountered by Greek nationals when inheriting and registering property are still being reported, in particular following application by the Turkish authorities of the amended Land Registry Law, including their interpretation of the provisions on reciprocity. As regards reciprocity, the ECtHR held that there had been a violation of Article 1 of Protocol 1 (peaceful enjoyment of possessions) to the ECHR and ordered either the return of property or financial compensation for the applicants.

*Overall,* there has been progress on the ground, with the adoption of legislation amending the 2008 Law on foundations. The current legal framework broadly provides for the return of properties entered in the 1936 declarations of the non-Muslim community foundations widening, thus, the scope of the February 2008 legislation. The Turkish authorities and the Foundations Council need to ensure the swift implementation of the new legislation. The deeds of the Büyükada orphanage and of properties on the island of Bozcaada (Tenedos) were transferred to the Ecumenical Patriarchate and to the Bishop of Imvros and Tenedos,

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40 As regards this case and the issue of just satisfaction, the ECtHR judgment of 15 June 2010 found that Turkey had to re-register the property in question in the land register in the applicant's name.

respectively. The Law on foundations continued to be implemented, albeit with delays and procedural problems, enabling the return of 181 properties to community foundations. The property of merged foundations remains outside the scope of the August 2011 amendments to the Law on foundations. The ongoing cases against the Mor Gabriel Syriac Orthodox monastery continue to raise concerns. Turkey needs to ensure full respect of the property rights of all non-Muslim religious communities.

*Respect for and protection of minorities, cultural rights*

Efforts were made in favour of minority schools. In parallel to the practice in public schools, the Ministry of National Education has extended support to the minority schools in the form of new textbooks. In the 2010-2011 academic year, mathematics and introduction to science textbooks were translated into Armenian and distributed free of charge.

However, Turkey's approach to minority rights remained restrictive. Turkey maintained its reservations on the UN International Covenant on civil and political rights regarding the rights of minorities and the UN Covenant on economic, social and cultural rights regarding the right to education, which remained causes for concern. Turkey has not signed the Council of Europe Framework Convention for the protection of national minorities.

There are no mechanisms or specific bodies in Turkey to combat racism, xenophobia, anti-Semitism and intolerance. No specific legislation exists and, where legislation does address discrimination issues, it is often interpreted in a restrictive manner by the courts.

The situation of the Greek minority has not changed. It continues to encounter problems with access to education and property rights, including on the islands of Gökçeada (Imvros) and Bozcaada (Tenedos). The decision to reopen a school in Gökçeada (Imvros) is still pending.

The management of minority schools, including accountability to both minority Heads and non-minority Deputy Heads[41], remained an issue, pending an implementing regulation. Minority schools faced procedural and bureaucratic difficulties with registration, budget problems and sustainability issues due to the number of students enrolled (restricted by law to those Turkish nationals from the same minority). In March the Human Rights Commissioner of the Council of Europe encouraged Turkish authorities to remove the legal obstacles and allow non-Muslim communities to provide education, in their schools, to children of these minorities irrespective of the legal status of these children, or the status of their parents or legal guardians. Armenian children will, as of the school year 2011-2012, be allowed to attend Armenian minority schools as guest students.

Anti-Semitism and hate speech in the media targeting missionaries or Christians in general remain an issue and have not been punished by the judiciary or media institutions. Some anti-missionary rhetoric remains in compulsory school textbooks.

The court case on the murder of Armenian journalist Hrant Dink in 2007 is continuing, separately from the Trabzon case, with only minor progress since the ECtHR judgment of 14 September 2010. In January, President Gül initiated an inquiry by the State Supervisory

[41] The Deputy Head of these schools represents the Turkish Ministry of Education and has more powers than the Head.

Council into the murder. An Administrative Court in Istanbul fined[42] the Ministry of the Interior for not taking protective measures. The lawyers of the Dink family requested that, in response to the ECtHR ruling, an investigation about the potential implication of high-ranking officers in the murder be launched directly by the prosecution and focus on unearthing links between the accused and these officers. Two ministers spoke out against any such investigation. This was criticised as putting the judiciary under political pressure. There were no developments in this investigation. Following a change in the law regarding juveniles, the case of prime suspect Samast was transferred to the juvenile courts.

*Overall*, Turkey's approach to minorities remained restrictive. Full respect for and protection of language, culture and fundamental rights, in accordance with European standards, has yet to be achieved. Turkey needs to make further efforts to enhance tolerance and promote inclusiveness vis-à-vis minorities. There is a need for comprehensive revision of the existing legislation, the introduction of comprehensive legislation to combat discrimination and to establish protection mechanisms or specific bodies to combat racism, xenophobia, anti-Semitism and intolerance.

As regards **cultural rights**, the Law on the establishment and broadcasting principles of radio and TV stations entered into force in March 2011. It permits broadcasts in languages other than Turkish by all nationwide radio and television stations. Temporary suspension of broadcasting remains possible by Prime Ministerial or Ministerial decision, in cases of threats to national security and public order, but can now be appealed against in court (*See also Chapter 10 - Information society and media).*

Mardin Artuklu University continued post-graduate education in Kurdish. The Higher Education Board (YÖK) authorised the opening of a Kurdish Language and Literature Department in Muş Alparslan University in 2011. Since there was not enough teaching staff, the university offered a Kurdish language elective course at undergraduate level only. The course was completed at the end of July.

The legal amendments adopted in April 2010 and March 2011 allow election advertising in languages other than Turkish and open the door for public or private radio or television channels to broadcast in languages or dialects other than Turkish. However, there are still laws that restrict the use of languages other than Turkish, including the Constitution and the Political Party Law. Diverse Kurdish groups, NGOs and trade unions submitted a one million signature petition to parliament demanding the lifting of all restrictions on use of the mother tongue in daily life.

The courts took a number of positive decisions regarding the use of languages other than Turkish, including Kurdish. The Mayor of Sur and the municipal council in Diyarbakır were acquitted in January 2011 in a case brought against them for offering municipal services in multiple languages.

A law provides for interpretation free of charge for non-Turkish speakers during their defence or statement-taking, the investigation phase and court hearings for suspects, victims or witnesses. In March 2011, a court in İzmir permitted a Kurdish local politician to make his

[42] The Administrative Court emphasised that "protective measures remained on paper and precautionary measures for [Dink's] protection had not been put into action".

defence statement in Kurdish and decided that a Kurdish interpreter would be present at the next session.

However, such practice is not consistently followed. The judiciary issued contradictory decisions in court cases against Kurdish politicians and human rights defenders. In May 2011, the Doğubayazıt Criminal Court sentenced the former Mayor of Doğubayazıt and members of the municipal council for violating the Law on the use of Turkish letters by naming a park in Kurdish back in 2007.

Restrictions are still reported on the use of Kurdish in prisons, during visits and exchanges of letters.

Referring to the principle of "national unity" the Constitutional Court upheld the 1934 law on surnames and rejected the request of a Syriac Turkish citizen to use a Syriac surname.

In April 2011, the unfinished statue of humanity by Mehmet Aksoy in Kars was demolished. The demolition was finalized in July.

As regards **Roma**, some steps were taken to address long-standing problems. A discriminatory clause in the Law on the movement and residence of aliens, which authorised the Ministry of the Interior to 'expel stateless and non-Turkish gypsies and aliens that are not bound to the Turkish culture' was amended in January 2011.

In March 2011, the Minister in charge of the Roma opening announced the construction of nearly 9,000 housing units by the TOKİ administration to address the problem of "housing in a healthy environment".

A Roma Research and Implementation Centre was established within Adnan Menderes University in Aydın province.

However, the Roma opening has not led to a comprehensive strategy to address the problems of the Roma population, who still face social exclusion, marginalisation and discrimination in access to education and health services due to their lack of identity cards, and also to housing, employment and participation in public life. School drop-out rates for Roma children remained higher than those of other children. Access for Roma children to pre-school education should be improved.

Turkey has rejected calls from the Roma community to participate in the 2005-2015 "Decade of Roma Inclusion".

The urban transformation scheme carried out in the Sulukule district of Istanbul and the accompanying resettlement of many Roma caused dislocation and disruption. Some could not adapt to their new housing but returned to Sulukule to live in much poorer conditions. In late June, Roma houses in Küçükbakkalköy were also demolished in the context of urban transformation.

*Overall*, Turkey has made progress on cultural rights, especially on use of languages other than Turkish by all nationwide radio and television stations and on use of multiple languages by municipalities. The opening of a Kurdish Language and Literature Department in Muş Alparslan University has been authorised. However, restrictions remain on use of languages other than Turkish in political life, in contacts with public services and in prisons. The legal framework on use of languages other than Turkish is open to restrictive interpretations and

implementation remains inconsistent. There has been some progress as regards the Roma, in particular on amending discriminatory legislation. However, a comprehensive policy to address the situation of the Roma is missing.

*Situation in the east and south-east*

The government continued to implement the South-East Anatolia project (GAP), aimed at socio-economic development of the region, with a view to completing it by 2012. Investments in irrigation, road transport, health and education continued, along with special programmes on business development, human resources and empowerment of women. Big dam projects are being criticised for threatening sustainable development of the region by destroying the living conditions of the local population, including historical heritage, natural habitats, species and fertile agricultural land along rivers.

The Kurdish issue was widely discussed, notably during the run-up to the elections in June.

In February 2011, a sub-committee to investigate the circumstances of missing persons Tolga Baykal Ceylan and Cemal Kırbayır was established under the TGNA Human Rights Investigation Committee. The JİTEM (Intelligence Gendarmerie) and Colonel Temizöz cases regarding extrajudicial killings and persons missing since the 1990s are continuing before the Diyarbakır Serious Crimes Court.

Criminal complaints were filed against the systematic torture and killing of Kurds in Diyarbakır military prison between 1981 and 1984, on the initiative of the NGO Diyarbakır Prison Commission on Facts Research and Justice. The Diyarbakır Prosecutor with Special Authority launched a judicial investigation, although no formal prosecution has been brought yet.

However, terrorist attacks by the PKK, which is on the EU list of terrorist organisations, intensified after April 2011, despite its twice-extended unilateral ceasefire to 15 June.

A clash with the PKK in Diyarbakır's Silvan sub-province changed the entire political climate in Turkey adversely. 13 soldiers were killed and seven others were wounded in a reported PKK ambush in mid July 2011, while the military had been carrying out operations to rescue two soldiers and a health worker kidnapped by the PKK a week earlier. Both the military and the Ministry of Interior (MoI) opened investigations on the Silvan clashes. Since the General Staff investigation results were similar to that of the MoI, the government saw no need to unveil the findings of MoI inspection results.

Tensions escalated further when the PKK killed eight Turkish soldiers and a village guard in mid-August in an ambush in province of Hakkari. On the same day the Turkish Air Force started cross border operations against many PKK targets on Qandil Mountain, Hakourk, Avashin - Basyan, Zap and Metina Regions.

Concrete measures announced as part of the democratic opening fell short of expectations and were not followed through. Dialogue was hampered by the arrest or detention of BDP-affiliated Kurdish politicians, locally elected mayors and members of municipal councils and some human rights defenders in connection with the KCK[43] trial. The trial of 152 defendants for alleged membership of KCK (104 of whom are in prison) started before the 6th Serious

[43] KCK stands for Koma Komalen Kurdistan, which means Kurdistan Communities Union.

Crimes Court in Diyarbakır on 18 October 2010 and continued throughout the year. Lawyers involved and human rights organisations' observers reported many procedural wrongdoings in the investigation, arrest, detention and trial procedures, and also during the initial collection of evidence. Demands for the release of the defendants and for the defence to be made in Kurdish were refused by the court.

Many other court cases ended in convictions against Kurdish political figures and BDP officials; others are continuing. The Diyarbakır prosecutor launched an investigation into the proposal made by the Democratic Society Congress (DTK) in December 2010 for a democratic autonomous Kurdistan. The BDP's general congress in September was also subject to a new judicial investigation.

A campaign of civil disobedience was launched by the DTK and BDP.

Landmines remained a security concern for military personnel and civilians in the south-east, with continued reports of death and injury. The government reported continuing use of anti-personnel mines by the PKK. Turkey reported that a total of 979,417 mines remained on its territory at the end of 2009, 2,361 fewer than in 2008. Under the 'Ottawa Convention' on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction, Turkey has undertaken to destroy all anti-personnel mines as soon as possible, but not later than 1 March 2014. However, the process has not been launched. An agreement was signed with NATO's Maintenance and Supply Agency (NAMSA) in November 2010 for destruction of approximately 22,000 Area Denial Artillery Munitions (ADAM). Destruction has started.

Clearance of anti-personnel landmines from an area of 212 million square metres along the Turkish-Syrian border has not yet started. The tender should be awarded in 2011, with a view to completing the work in 2014.

5,114 anti-personnel landmines have been cleared by the Gendarmerie General Command in areas under its responsibility. In October 2010, destruction of all stored anti-personnel landmines (approximately 3 million) was completed.

No steps have been taken to address the problem of village guards, who are paid and armed by the State. According to official figures, throughout Turkey, the total number of village guards exceeds 45,000.

*Overall,* the 2009 democratic opening, aimed at addressing the Kurdish issue in particular, was not followed through. Terrorist attacks intensified and have been/are consistently condemned by the EU. The detention of elected politicians and human rights defenders raises concerns. The truth about extra-judicial killings and torture in the south-east in the 1980s and 1990s has yet to be established following the due process of law. Landmines and the village guard system are still causes for concern.

*Refugees and internally displaced persons (IDPs)*

Some deficiencies remained in the process of compensating for losses due to terrorism and the fight against terrorism. Since the law entered into force in March 2008, up to December 2010 a total of 358,506 applications had been made to the Damage Assessment Commissions. Of these, 259,462 were assessed, with compensation paid in 146,441 cases and 113,021 applications rejected.

By April 2011, the Commissions had allocated compensation totalling € 900,302,745 to applicants who signed negotiated/amicable settlement declarations. However, delays in payments have been reported. The implementation period by the government of the Law on the compensation of losses resulting from terrorism and the fight against terrorism has been extended by another year.

Numerous cases have been brought in the administrative courts by rejected applicants. Several applied to the ECtHR. There is a need to assess the overall effectiveness of the compensation process in terms of implementation and legislation.

The situation of internally displaced persons (IDPs) in urban areas remains a cause for concern. IDPs often cannot return to their previous place of residence for a wide range of reasons, including security, the continuing village guard system, the presence of landmines, lack of basic infrastructure or capital and limited job opportunities. IDPs often live in sub-standard conditions, including camps.

Concerning **refugees and asylum-seekers**, circulars issued in 2010 produced some positive results in terms of improving practices on the part of law enforcement officials and central and local administrations.

However, the lack of a comprehensive legal framework for refugees and asylum-seekers prevented further improvement. A draft revised Foreigners and International Protection Law has been prepared. Meanwhile, continuing gaps in legislation, particularly in immigration-related detention and deportation practices, remain a concern. Unaccompanied minors found themselves at risk of detention together with adults and with no access to State child protection services.

*Overall*, the process of compensating IDPs has continued. There is a need to assess its overall effectiveness. An overall national strategy to address IDPs' needs better has not been developed yet. Despite some improvements, the lack of a comprehensive legal framework for refugees and asylum-seekers is an impediment to providing adequate treatment. Further improvements are needed in the general conditions at detention centres for foreigners.

### 2.3. Regional issues and international obligations

*Cyprus*

Turkey continued to express public support for the *negotiations* between the leaders of the two communities under the good offices of the UN Secretary-General aimed at finding a fair, comprehensive and viable solution to the Cyprus problem. This was acknowledged in the March 2011 Assessment Report by the UN Secretary-General on the status of the negotiations in Cyprus.

As emphasised by the negotiating framework and Council declarations, Turkey is expected actively to support the negotiations aimed at finding a fair, comprehensive and viable settlement of the Cyprus issue within the UN framework, in accordance with the relevant UN Security Council resolutions and in line with the principles on which the Union is founded. Turkey's commitment and concrete contribution to such a comprehensive settlement is crucial.

Despite repeated calls by the Council and the Commission, Turkey still has not complied with its obligations outlined in the declaration by the European Community and its Member States

of 21 September 2005 and in Council conclusions, including the December 2006 and December 2010 conclusions.

It has not met its obligation to ensure full, non-discriminatory implementation of the *Additional Protocol* to the Association Agreement and has not removed all obstacles to the free movement of goods, including restrictions on direct transport links with Cyprus.

There was no progress on *normalising bilateral relations* with the Republic of Cyprus. Turkey has not lifted its veto of Cyprus's membership of several international organisations, including the OECD and the Wassenaar Arrangement on export controls for conventional arms and dual-use goods. The Republic of Cyprus reported violations of its territorial waters and airspace by Turkey. Senior representatives of the Turkish government have stated that relations with the EU Presidency will be frozen for six months as of 1 July 2012 in the absence of a comprehensive settlement of the Cyprus issue when Cyprus takes over the Council presidency.

*Peaceful settlement of border disputes*

Turkey and Greece continued their efforts to improve bilateral relations. From 7 to 9 January 2011 the Greek Prime Minister visited Erzurum, accompanied by the Foreign Minister at the invitation of the Turkish Prime Minister.

The 53rd round of exploratory talks took place in July in Greece. Exploratory talks have been taking place since 2002 and have intensified since October 2009. The importance of cooperation has been underlined in high levels meetings. Between 8 and 10 March, the Turkish Foreign Minister paid a visit to Greece. He met the Greek Prime Minister and Foreign Minister and members of the Muslim minority living in Thrace. The threat of *casus belli* in response to the possible extension of Greek territorial waters made in the 1995 resolution of the Turkish Grand National Assembly still stands. In line with the negotiating framework, the Council conclusions of December 2010 noted that 'Turkey needs to commit itself unequivocally to good neighbourly relations and to the peaceful settlement of disputes in accordance with the United Nations Charter, having recourse, if necessary, to the International Court of Justice. In this context, the Union urges the avoidance of any kind of threat, source of friction or action which could damage good neighbourly relations and the peaceful settlement of disputes.' Greece made a substantial number of formal complaints about violations of its territorial waters and airspace by Turkey, including flights over Greek islands.

*Regional cooperation*

Turkey remains actively involved in regional initiatives including the South-East European Cooperation Process (SEECP) and the Regional Cooperation Council (RCC).

Bilateral relations with *other enlargement countries and neighbouring EU Member States* have been positive. Turkey has significantly intensified contacts in the *Western Balkans*, expressing a firm commitment to promoting peace and stability in the region. Turkey supports the European integration of all countries in the region. On 26 April 2011 the President of Turkey attended a tripartite meeting between Turkey, Serbia and Bosnia and Herzegovina in Belgrade.

Within the framework of the common security and defence policy, Turkey is continuing to contribute to the EU-led military mission in Bosnia and Herzegovina (EUFOR/ALTHEA). It

is also contributing to EUPM (the EU-led police mission in Bosnia and Herzegovina) and to the EULEX mission in Kosovo[44]. Turkey supports Kosovo's integration into the international community, European institutions and regional initiatives. Turkey provided humanitarian assistance to Albania and Montenegro following the floods in these two countries in December 2010. Turkey maintains strong ties with the former Yugoslav Republic of Macedonia. High-level bilateral meetings were held with Croatia, Serbia, Montenegro and Bosnia, Herzegovina and Kosovo.

Relations with *Bulgaria* remained positive.

As regards the *International Criminal Court (ICC), see Chapter 31 – Common foreign and security policy.*

## 3. ECONOMIC CRITERIA

In examining the economic developments in Turkey, the Commission's approach was guided by the conclusions of the European Council in Copenhagen in June 1993, which stated that membership of the Union requires the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union.

### 3.1. The existence of a functioning market economy

*Economic policy essentials*

Turkey's economic policy is tailored to maintaining an open, largely market-driven economy with relatively prudent public finance management and a well regulated financial sector. The Pre-Accession Economic Programme (PEP) submitted to the Commission in April 2011 adequately reflects needs and commitments to further reform. However, it drew to too large an extent on the Medium-Term Plan (MTP) already published in mid-2010. Turkey's economic governance still has to focus on the imbalances emerging from the stronger than anticipated recovery and on further structural reforms, some of which, particularly in taxation and employment, are expected from the new government, which took office after the June 2011 elections. The fragmentation of responsibilities between government bodies continues to complicate coordination of budgeting and medium-term economic policy-making. The authorities are stepping up their efforts to enhance cooperation through the establishment of a financial stability committee. *Overall,* the consensus as regards the fundamental goals of economic policy remains firm.

*Macroeconomic stability*

After a steep recovery in 2010 when the Turkish economy grew by 9% year-on-year, the rapid economic expansion continued with 10.2% year-on-year GDP growth in the first half of 2011. Economic activity bounced back strongly, which reflected some base effects, but also strong domestic demand growth driven by low real interest rates, strong capital inflows and a rapid acceleration in the growth in bank credit. The private sector remained the main driver of the recovery. In the first half of 2011, private consumption rose by 10.8% year on year, with private-sector investment, which accounts for about 15% of GDP, expanding by a remarkable 31.3% year on year. In spite of the June Parliamentary elections, government consumption

[44] Under UNSCR 1244/1999.

# ΠΑΡΑΡΤΗΜΑ IV

Ψήφισμα του Αμερικανικού Κογκρέσου H.R.1631:
"Calling for the protection of religious sites and artifacts from and in Turkish-occupied areas of northern Cyprus as well as for general respect for religious freedom."
111th Congress Session. [2010]

111TH CONGRESS
2D SESSION

# H. RES. 1631

Calling for the protection of religious sites and artifacts from and in Turkish-occupied areas of northern Cyprus as well as for general respect for religious freedom.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2010

Mr. BILIRAKIS (for himself, Mrs. MALONEY, Ms. ROS-LEHTINEN, Mr. SMITH of New Jersey, Mr. SARBANES, Ms. BERKLEY, Mr. FRANKS of Arizona, Ms. TITUS, Mr. SCHIFF, Mr. MARIO DIAZ-BALART of Florida, Mr. HINCHEY, Mr. MCGOVERN, Mr. JACKSON of Illinois, Mr. LIPINSKI, and Mr. SPACE) submitted the following resolution; which was referred to the Committee on Foreign Affairs

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# RESOLUTION

Calling for the protection of religious sites and artifacts from and in Turkish-occupied areas of northern Cyprus as well as for general respect for religious freedom.

Whereas the Government of Turkey invaded the northern area of the Republic of Cyprus on July 20, 1974, and the Turkish military continues to illegally occupy the territory to this day;

Whereas the Church of Cyprus has filed an application against Turkey with the European Court of Human Rights for violations of freedom of religion and association as Greek Cypriots in the occupied areas are unable to worship freely due to the restricted access to religious

sites and continued destruction of the property of the Church of Cyprus;

Whereas according to the United Nations-brokered Vienna III Agreement of August 2, 1975, "Greek-Cypriots in the north of the island are free to stay and they will be given every help to lead a normal life, including facilities for education and for the practice of their religion . . .";

Whereas according to the Secretary General's Report on the United Nations Operation in Cyprus in June 1996, the Greek Cypriots and Maronites living in the northern part of the island "were subjected to severe restrictions and limitations in many basic freedoms, which had the effect of ensuring that inexorably, with the passage of time, the communities would cease to exist.";

Whereas the very future and existence of historic Greek Cypriot, Maronite, and Armenian communities are now in grave danger of extinction;

Whereas the Abbot of the Monastery of the Apostle Barnabas is routinely denied permission to hold services or reside in the monastery of the founder of the Church of Cyprus and the Bishop of Karpass has been refused permission to perform the Easter Service for the few enclaved people in his occupied diocese;

Whereas there are only two priests serving the religious needs of the enclaved in the Karpas peninsula, Armenians are not allowed access to any of their religious sites or income generating property, and Maronites are unable to celebrate the mass daily in many churches;

Whereas in the past Muslim Alevis were forced out of their place of prayer and until recently were denied the right to build a new place of worship;

Whereas under the Turkish occupation of northern Cyprus, religious sites have been systematically destroyed and a large number of religious and archaeological objects illegally looted, exported, and subsequently sold or traded in international art markets, including an estimated 16,000 icons, mosaics, and mural decorations stripped from most of the churches, and 60,000 archaeological items dating from the 6th to 20th centuries;

Whereas at a hearing held on July 21, 2009, entitled "Cyprus' Religious Cultural Heritage in Peril" by the U.S. Helsinki Commission, Michael Jansen provided testimony detailing first-hand accounts of Turkish soldiers throwing icons from looted churches onto burning pyres during the Turkish invasion and provided testimonies of how churches were left open to both looters and vandals with nothing done to secure the religious sites by the Turkish forces occupying northern Cyprus;

Whereas Dr. Charalampos G. Chotzakakoglou also provided testimony to the U.S. Helsinki Commission that around 500 churches, monasteries, cemeteries, and other religious sites have been desecrated, pillaged, looted, and destroyed, including one Jewish cemetery;

Whereas 80 Christian churches have been converted into mosques, 28 are being used by the Turkish army as stores and barracks, 6 have been turned into museums, and many others are used for other nonreligious purposes such as coffee shops, hotels, public baths, nightclubs, stables, cultural centers, theaters, barns, workshops, and one is even used as a mortuary;

Whereas expert reports indicate that since 2004 several churches have been leveled, such as St. Catherine Church in Gerani which was bulldozed in mid-2008, the northern

wall of the Chapel of St. Euphemianos in Lysi which was destroyed by looters as they removed all metal objects within the wall, the Church of the Holy Virgin in the site of Trachonas was used as a dancing school until the Turkish occupiers built a road that destroyed part of it in March 2010, the Church of the Templars was converted into a night club, and the Church of Panagia Trapeza in Acheritou village was used as a sheep stall before it was recently destroyed by looters removing metal objects from medieval graves within the church;

Whereas the Republic of Cyprus discovered iron-inscribed crosses stolen from Greek cemeteries in the north in trucks owned by a Turkish-Cypriot firm that intended to send them to India to be recycled;

Whereas United States art dealer Peggy Goldberg was found culpable for illegally marketing 6th century mosaics from the Panagia Kanakaria church because the judge found that a "thief obtains no title or right of possession of stolen items" and therefore "a thief cannot pass any right of ownership . . . to subsequent purchasers.";

Whereas the extent of the illicit trade of religious artifacts from the churches in the Turkish occupied areas of northern Cyprus by Turkish black market dealer Aydin Dikmen was exposed following a search of his property by the Bavarian central department of crime which confiscated Byzantine mosaics, frescoes, and icons valued at over €30 million;

Whereas a report prepared by the Law Library of Congress on the "Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law" for the U.S. Helsinki Commission details what obligations the Government of Turkey has as the occupying power in

northern Cyprus for the destruction of religious and cultural property there under international law;

Whereas the Hague Convention of 1954 for the Protection of Cultural Property During Armed Conflict, of which Turkey is a party, states in article 4(3) that the occupying power undertakes to "Prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of any acts of vandalism directed against cultural property";

Whereas according to the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership which has been ratified by Cyprus and Turkey, parties are required to take steps to prevent illicit traffic through the adoption of legal and administrative measures and the adoption of an export certificate for any cultural object that is exported, and "illicit" refers to any export or transfer of ownership of cultural property under compulsion that arises from the occupation of a country by a foreign power;

Whereas according to the European Court of Human Rights in its judgment in the case of Cyprus v. Turkey of May 10, 2001, Turkey was responsible for continuing human rights abuses under the European Convention on Human Rights throughout its 27-year military occupation of northern Cyprus, including restricting freedom of movement for Greek Cypriots and limiting access to their places of worship and participation in other aspects of religious life;

Whereas the European Court further ruled that Turkey's responsibility covers the acts of soldiers and subordinate

local administrators because the occupying Turkish forces have effective control of the northern part of the Republic of Cyprus;

Whereas in March 2008, President Christofias and former Turkish Cypriot leader Talat agreed to the setting up of a "Technical Committee on Cultural Heritage" with a mandate to engage in "serious work" to protect the varied cultural heritage of the entire island;

Whereas this Committee was developing a list of all cultural heritage sites on the island to create an educational interactive program for the island's youth to understand the shared heritage and to undertake a joint effort to restore the Archangel Michael Church and the Arnvut Mosque;

Whereas while significant work was done on the Arnvut Mosque, the Archangel Michael Church remains in disrepair; and

Whereas, on July 16, 2002, and again in 2007, the United States and the Government of the Republic of Cyprus signed a Memorandum of Understanding to impose import restrictions on categories of Pre-Classical and Classical archaeological objects, as well as Byzantine period ecclesiastical and ritual ethnological materials, from Cyprus: Now, therefore, be it

*Resolved,* That the House of Representatives—

(1) expresses appreciation for the efforts of those countries that have restored religious property wrongly confiscated during the Turkish occupation of northern Cyprus;

(2) welcomes the efforts of many countries to address the complex and difficult question of the

status of illegally confiscated religious art and artifacts, and urges those countries to continue to ensure that these items are restored to the Republic of Cyprus in a timely, just manner;

(3) welcomes the initiatives and commitment of the Republic of Cyprus to work to restore and maintain religious heritage sites;

(4) urges the Government of Turkey to—

(A) immediately implement the United Nations Security Council Resolutions relevant to Cyprus as well as the judgments of the European Court of Human Rights;

(B) work to retrieve and restore all lost artifacts and immediately halt destruction on religious sites, illegal archaeological excavations, and traffic in icons and antiquities; and

(C) allow for the proper preservation and reconstruction of destroyed or altered religious sites and immediately cease all restrictions on freedom of religion for the enclaved Cypriots;

(5) calls on the United States Commission on International Religious Freedom to investigate and make recommendations on violations of religious freedom in the areas of northern Cyprus under control of the Turkish military;

(6) calls on the President and the Secretary of State to include information in the annual International Religious Freedom and Human Rights reports on Cyprus that detail the violations of religious freedom and humanitarian law including the continuous destruction of property, lack of justice in restitution, and restrictions on access to holy sites and the ability of the enclaved to freely practice their faith;

(7) calls on the State Department Office of International Religious Freedom to address the concerns and actions called for in this resolution with the Government of Turkey, OSCE, the United Nations Special Rapporteur on Freedom of Religion or Belief, and other international bodies or foreign governments;

(8) urges OSCE to ensure that member states do not receive stolen Cypriot art and antiquities; and

(9) urges OSCE to press the Government of Turkey to abide by its international commitments by calling on it to work to retrieve and restore all lost artifacts, to immediately halt destruction on religious sites, illegal archaeological excavations, and traffic in icons and antiquities, to allow for the proper preservation and reconstruction of destroyed or

altered religious sites, and to immediately cease all restrictions on freedom of religion for the enclaved Cypriots.

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