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COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION
OF HUMAN RIGHTS

APPLICATIONS Nos. 6780/74 AND 6950/75

CYPRUS

AGAINST

TURKEY

REPORT OF THE COMMISSION

(Adopted on 10 July 1976)

VOLUME I

This page is part of the file "Cyprus against Turkey (Application Nos 6780/74 and 6950/75 before the European Commission of Human Rights). This file comprises the following documents: a) Report of the European Commission of Human Rights (Volumes I and II) adopted on 10 July 1976; b) Memorandum of the Government of the Republic of Turkey on the question of Human Rights in Cyprus (Doc. CM (77) 117 of 24 May 1977 and corrigenda); c) Observations of the Government of Cyprus on the document of the Turkish Government entitled "Memorandum of the Government of the Republic of Turkey on the question of Human Rights in Cyprus" (Document CM (77) 150 of 20 June 1977); d) Resolution DH (79) I adopted by the Committee of Ministers of the Council of Europe on 20 January 1979.
By virtue of the above-mentioned Resolution DH (79) I this documentation is declassified as from 31 August 1979.

STRASBOURG

SECRET

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CYPRUS v. TURKEY

REPORT OF THE COMMISSION

(Adopted on 10 July 1976)

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[Volume II - Appendices I to XIV]

[Appendix XV - Friendly settlement - separate document]

LIST OF PRINCIPAL DOCUMENTS

The principal documents to which reference is made in the present Report are the following:

Abbreviation	Full title
Application I	Application No. 6780/74 of 19 September 1974 addressed to the Secretary General of the Council of Europe by the Deputy Permanent Representative of Cyprus to the Council of Europe (for text see para. 19 of this Report
Application II	Application No. 6950/75 of 21 March 1975 addressed to the Secretary General of the Council of Europe by the Permanent Representative of Cyprus to the Council of Europe (for text see para. 21 of this Report)
Particulars I	Particulars of Application No. 6780/74 submitted by the applicant Government, of 15 November 1974
Particulars II	Particulars of Application No. 6950/75 submitted by the applicant Government, of 14 July 1975
Statements I	Statements regarding facts set out in Particulars I (Appendix C to Particulars I)
Statements II	Appendix C to Particulars II
Hearing on admissibility	Verbatim Record of the hearing of the Parties on the admissibility of the applications held in Strasbourg on 22 and 23 May 1975 (Doc. E 3635)
Decision on admissibility	Decision of the Commission of 26 May 1975 as to the admissibility of Applications Nos. 6780/74 and 6950/75 by Cyprus against Turkey (Appendix I to this Report)
Verbatim Record	Verbatim Record of the hearing of witnesses held by the Delegation in Cyprus from 2 to 6 September 1975 (Doc. 41. 351)
Addendum	Addendum to the Verbatim Record of the hearing of witnesses held by the Delegation in Cyprus from 2 to 6 September 1975 (Doc. 41. 987)

INTRODUCTION

1. The following is an outline of the two applications as submitted by the Republic of Cyprus to the European Commission of Human Rights under Art. 24 of the European Convention on Human Rights.

In their first application (No. 6780/74) the applicant Government stated that Turkey had on 20 July 1974 invaded Cyprus, until 30 July occupied a sizeable area in the north of the island and on 14 August 1974 extended their occupation to about 40% of the territory of the Republic. The applicant Government alleged violations of Arts. 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art. 1 of Protocol No. 1 and of Art. 14 of the Convention in conjunction with the aforementioned Articles.

In their second application (No. 6950/75) the applicant Government contended that, by acts unconnected with any military operation, Turkey had, since the introduction of the first application, committed, and continued to commit, further violations of the above Articles in the occupied territory.

2. The respondent Government argued that the applications were inadmissible on the following grounds: the applicants were not entitled to represent the Republic of Cyprus and accordingly had no standing before the Commission as applicants under Art. 24 of the Convention; domestic remedies had not been exhausted as required by Art. 26 of the Convention; the respondent Government had no jurisdiction in the area of Cyprus where most of the alleged acts were claimed to have occurred; and the applications constituted an abuse of the right of petition(1).

3. The two applications were joined by the Commission on 21 May 1975.

Having received the Parties' written observations on the admissibility of the applications the Commission, on 22 and 23 May 1975, heard their oral submissions on this issue.

On 26 May 1975 the Commission declared the applications admissible. This decision, together with a list of the Parties' representatives at the hearing, is reproduced in Appendix I to the present Report.

4. For the purpose of carrying out its double task under Art. 28 of the Convention of establishing the facts of the case and being at the Parties' disposal with a view to securing a friendly settlement, the Commission set up a Delegation which,

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(1) For detailed argumentation see Appendix I to this Report.

in the course of its investigation, held a hearing of witnesses and obtained further evidence in Cyprus in September 1975. Both the Commission and the Delegation also put themselves at the Parties' disposal with a view to securing a friendly settlement.

The respondent Government, for reasons stated in their communication of 27 November 1975 (1), did not participate in the proceedings on the merits and were not prepared to enter into negotiations with the applicant Government with a view to reaching a friendly settlement of the case. The legal problems arising as a result of this non-participation are dealt with in Part I, Chapter 4, of the Report.

5. The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention after deliberation in plenary session, the following members being present at all or part of these sessions:

MM. J.E.S. FAWCETT, President
G. SPERDUTI, First Vice-President
C.A. NØRGAARD, Second Vice-President
F. ERMACORA
M.A. TRIANTAFYLLIDES
E. BUSUTTIL
L. KELLBERG
B. DAVER
T. OPSAHL
J. CUSTERS
C.H.F. POLAK
J.A. FROWEIN
G. JÖRUNDSSON
R.J. DUPUY
G. TENEKIDES
S. TRECHSEL
B.J. KIERNAN
N. KLECKER

The Report was adopted on 10 July 1976 and is now transmitted to the Committee of Ministers in accordance with para. (2) of Art. 31.

A friendly settlement of the case has not in the circumstances been possible and the purpose of the Commission in this Report, as provided in para. (1) of Art. 31, is accordingly:

(1) to establish the facts, and

(2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

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(1) Appendix II to this Report.

The Commission's establishment of the facts in the present Report is based on submissions made and evidence received up to 18 May 1976.

The full text of the oral and written pleadings of the Parties, together with the documents handed in as exhibits, and the verbatim record of the hearing of witnesses are held in the archives of the Commission and are available to the Committee of Ministers if required.

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PART I - GENERAL

Chapter 1 - Background of events

6. Cyprus was under Turkish rule from 1571, when it was conquered by the Turks from the Venetians, until 1878, when it came under British administration. It was annexed to the British Crown in 1914 and, after Turkey had under the Treaty of Lausanne of 24 July 1923 (1) recognised this annexation, made a Crown colony in 1925.

7. In 1931 serious disturbances arose in Cyprus in connection with the demand for union with Greece (enosis) put forward by the Greek Cypriots (about 80% of the population). After World War II the enosis movement was resumed by the Greek Cypriots under the leadership of Archbishop Makarios, but the Turkish Cypriots (about 18% of the population) rejected a union with Greece and proposed the continuation of British rule or the island's partition.

In 1955 the London Conference of the Foreign Ministers of Greece, Turkey and the United Kingdom failed to produce a solution. In Cyprus emergency measures (2) were introduced by the British authorities in order to suppress the guerilla activities of EOKA (National Organisation of Cypriot Struggle) headed by Colonel Grivas, a former officer of the Greek army.

The United Nations General Assembly, seized of the Cyprus question as an issue of self-determination since 1955, repeatedly urged the parties concerned to find a solution through negotiation.

8. The proposal, accepted by Archbishop Makarios, that Cyprus should become an independent state eventually led to negotiations and, at the Zurich Conference (1959), to an agreement between Greece and Turkey, subsequently accepted by the United Kingdom and the leaders of the Greek and Turkish Cypriot communities (London agreement) (3).

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(1) League of Nations Treaty Series, Vol. 28, p. 12 (No. 701). Art. 20 of the Treaty stated: "Turkey hereby recognises the annexation of Cyprus proclaimed by the British Government on the 5th November, 1914".

(2) These measures were the subject of Application No. 176/56 - Greece v. United Kingdom - see Yearbook of the European Convention on Human Rights, Vol. 1, pp. 128, 130.

(3) Following this agreement proceedings in Application No. 176/56, and in a further application brought by Greece against the United Kingdom (No. 299/57), were terminated - see Yearbook, Vol. 2, pp. 174 et seq.

The following instruments resulted from the agreements:

- the Treaty of Establishment of 16 August 1960 (1) setting up the Republic of Cyprus and providing that its territory shall comprise the island of Cyprus with the exception of the military bases of Dhekhelia and Akrotiri (which remained under British sovereignty);

- the Treaty of Alliance of 16 August 1960 (2), in which Cyprus, Greece and Turkey undertook to resist any attack or aggression directed against the independence or territorial integrity of Cyprus; it further provided that a tripartite headquarters should be established and that military contingents should be stationed on the territory of the Republic, the Greek and Turkish contingents to consist of 950 and 650 officers and men respectively;

- the Treaty of Guarantee of 16 August 1960 (3), in which Cyprus undertook to maintain the constitutional order created, and in which Greece, Turkey and the United Kingdom guaranteed this order and the independence and integrity of Cyprus.

9. Under the Constitution of Cyprus of 1960, provided for in the above agreements, executive power was vested in a Greek Cypriot President (since 1960 Archbishop Makarios) and a Turkish Cypriot Vice-President (Mr. Kütchük, succeeded by Mr. Denktash). Decisions of the Council of Ministers, composed of seven Greek and three Turkish Cypriots, were binding on the President and Vice-President who could, however, exercise a veto in matters relating to security, defence and foreign affairs. Of the members of the House of Representatives 70% were to be elected from the Greek and 30% from the Turkish Cypriot community, and the civil service was to consist of 70% Greek and 30% Turkish Cypriots.

10. In 1963 violent disturbances broke out between the two communities in Cyprus resulting in losses of life and property on both sides. The administration ceased to function on a bicommunal basis. There were further outbreaks of inter-communal violence in 1964, 1965 and 1967.

A United Nations peace-keeping force (United Nations Force in Cyprus - UNFICYP) was sent to the island in 1964 and attempts were made by United Nations representatives to

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(1) United Nations Treaty Series, Vol. 382, p. 10 (I No. 5476).
(2) United Nations Treaty Series, Vol. 397, p. 289 (I No. 5712).
(3) United Nations Treaty Series, Vol. 382, p. 4 (I No. 5475), reproduced at Appendix III to this Report.

mediate (Plaza Report of 1965). These attempts having failed, intercommunal talks under the auspices of the United Nations Secretary General began in 1968 and continued until July 1974. These talks brought progress in some respect but no final agreement was reached.

11. On 6 July 1974 President Makarios made public a letter he had sent on 2 July to General Ghizikis, head of the new regime in Greece since November 1973. In this letter he charged EOKA-B, an illegal organisation which since 1972 had been conducting a terrorist campaign against his Government, and officers of Greek nationality in the Cypriot National Guard with an attempt on his life, instigated by Greek Government agencies. General Denissis, commanding officer of the Cypriot National Guard, having been called to Athens on 13 July, a coup d'état took place in Cyprus under the leadership of other Greek officers on 15 July 1974 and, as a result, President Makarios had to leave the island on 16 July.

12. In Turkey the National Security Council met on 15 July 1974. The Council of Ministers decided on the following day to convene both Houses of the National Assembly on 19 July. In a note to the United Kingdom Turkey called for joint British-Turkish action under the Treaty of Guarantee to protect the independence of Cyprus and announced that, if this did not take place, she would proceed unilaterally as provided for by the Treaty. Conversations followed in London on 18 July between the Turkish Prime Minister Ecevit and Foreign Minister ad interim Isik and United Kingdom Foreign Minister Callaghan, but no agreement on a joint action was reached. Large troop movements began towards the south and west of Turkey. On 19 July the Grand National Assembly (Chamber and Senate) met in closed session in Ankara, it alone having authority under the Turkish Constitution (Art. 66) to order dispatch of armed forces abroad.

On 20 July 1974 Turkish army units were landed in the Kyrenia area of Cyprus with naval and air support. The purpose of this operation was stated in a Government communiqué of the same day (1) in the following words:

"A coup d'état has been carried out in Cyprus by both the Greek contingent stationed in the Island and the unconstitutional Greek National Guard which is under the complete command and control of officers from the mainland Greece. Since the forces involved in the coup are the military units under the direct command of a foreign State, the independence and the territorial integrity of Cyprus have been seriously impaired as a result of this action. The present situation in the Island, as has emerged from the coup, has completely darkened the future of the independent State of Cyprus. In these circumstances it is hoped that all States which are favouring the independence and the territorial integrity of

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(1) Published in the special issue "Cyprus" of the Turkish quarterly review "Foreign Policy" (Ankara, 1974/75), pages 224-225.

Cyprus will support Turkey in her action aimed at restoring the legitimate order in the Island, undertaken in her capacity as a State which guaranteed the independence of Cyprus under international treaties.

After having fully evaluated the recent events which took place in the Island and in view of the failure of the consultations and efforts it undertook in accordance with the Treaty of Guarantee of 1960 as one of the guarantor powers, the Government of the Republic of Turkey has decided to carry out its obligations under Article 4/2 of the said Treaty, with a view to enable Cyprus to survive as an independent State and to safeguard its territorial integrity and the security of life and property of the Turkish community and even that of many Greek Cypriots who are faced with all sorts of dangers and pressures under the new Administration.

The purpose of our peaceful action is to eliminate the danger directed against the very existence of the Republic of Cyprus and the rights of all Cypriots as a whole and to restore the independence, territorial integrity and security and the order established by the basic Articles of the Constitution. Turkey, in the action she undertook as the Guarantor Power shall act with the sincere desire of co-operation with the United Nations Peace-keeping Force in the Island in the restoration of conditions of security. On the other hand, because of the above-mentioned aim of the action, those Greek Cypriots who are wholeheartedly attached to the independence of Cyprus and to the rule of democracy in the Island, need not be concerned. Turkey's aim is to restore security and human rights without any discrimination whatsoever among the Communities.

Our purpose in Cyprus, a bicommunal State, is to get the intercommunal talks to start as rapidly as possible in order to restore the situation prior to the coup and the legitimate order. But it is natural that we cannot consider as interlocutor the present de facto Administration which seized power by the use of brutal force and which is not representative of the Greek Cypriot Community.

Following the restoration of constitutional order, Turkey will strictly abide by what is required from a guarantor power which fulfilled its treaty obligations."

By 22 July 1974 the Turkish army units landed in the Kyrenia area had joined up with Turkish military units already posted or dropped by parachute in the northern part of Nicosia.

13. Following Resolution 353 of the United Nations Security Council of 20 July 1974 (1) a cease-fire was agreed for 16.00 hours on 22 July, but the area of Turkish military action

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(1) Appendix V to this Report.

continued to be extended up to 30 July 1974, when it formed a rough triangle between the northern part of Nicosia and pointed approximately six miles west, and six miles east of Kyrenia.

The coup d'état having failed, Assembly President Clerides took office as acting President of Cyprus on 23 July 1974.

The First Geneva Conference of the Foreign Ministers of Greece, Turkey and the United Kingdom, meeting as Guarantors under the Treaty of Guarantee, opened on 25 July 1974 and on 30 July issued a declaration (1) convening a second conference on 8 August.

14. The Second Geneva Conference was abortive and the Turkish forces on 14 August 1974 resumed their armed action with, according to their General Staff, over 20,000 men and 200 tanks. At 17.00 hours on 16 August a cease-fire was declared. The Turkish forces had by then reached a line which runs from Morphou through Nicosia to the south of Famagusta; in two areas, Louroujina and west of Famagusta, they advanced beyond this line.

On 7 December 1974 President Makarios returned to Cyprus.

15. The Parliamentary Assembly of the Council of Europe established a working group on Cyprus on 5 September and adopted Resolutions 736 and 737 on 15 September 1974. The working group visited Cyprus from 12 to 14 December. On 27 January 1975 the Parliamentary Assembly adopted Recommendation 756, related to matters dealt with in the report made on Cyprus by the Committee on Population and Refugees (2). From 10 to 13 March the working group visited Ankara and Athens and on 10 April the Political Affairs Committee submitted a Report on Cyprus and a draft Recommendation (3), which was unanimously adopted by the Parliamentary Assembly on 24 April 1975. On 9 January 1976 the Political Affairs Committee submitted a Report on the situation in the Eastern Mediterranean with a draft Resolution on the situation in Cyprus (4), which was adopted by the Parliamentary Assembly on 30 January.

16. The Security Council of the United Nations from the very beginning of the "explosive situation" in Cyprus in July 1974 acted continuously. Hundreds of letters of the responsible leaders of the two communities were sent to the Security Council, written communications of concerned member States of the United Nations dealt with the situation and Special Reports of the Secretary General on developments in Cyprus were submitted to the Security Council (5).

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(1) Appendix IV to this Report.
(2) Council of Europe Doc. 3566 (Rapporteur Forni).
(3) Council of Europe Doc. 3600 (Rapporteur Karasek).
(4) Council of Europe Doc. 3708 (Rapporteur Karasek).
(5) A collection of relevant UN documents is available in the case file.

Action of the United Nations comprised:

- Security Council Resolutions 353 (1), 360 (2), 361 (3) and further resolutions (concerning inter alia the extension of UNFICYP);

- General Assembly Resolutions 3212 - XXIX (4), 3395 - XXX (5) and 3450 - XXX (6);

- Resolutions 4 (XXXI) (7) and 4 (XXXII) (8) of the Commission on Human Rights;

- intercommunal talks held under the auspices of the Secretary General (9).

17. Intercommunal talks led by Mr Clerides and Mr Denktash, took place intermittently between September 1974 and February 1975. On 20 September 1974 agreement was reached on exchange of prisoners and detainees, completed on 31 October. Following an agreement of 11 November 1974 the evacuation to the south of Cyprus of persons held in the remaining two detention centres of Voni and Gypsou was completed by the Turkish authorities on 28 November. On 17 January 1975 a sub-committee on humanitarian issues was established.

On 13 February 1975 a constituent assembly set up by the Turkish Cypriot community declared the area north of the demarcation line (10) to constitute a Turkish Federated State of Cyprus and on 8 June a constitution for it was promulgated.

Further intercommunal talks were held in Vienna in April, June and July/August 1975. They led to an agreement allowing all Turkish Cypriots in the south of the island to move to the north, permitting Greek Cypriots in the north to stay or go to the south and, in this connection, providing for Greek Cypriot priests and teachers to come to the north and for 800 Greek Cypriot families to be reunited there (11). The following intercommunal talks in New York were adjourned in September 1975 without result and sine die, but further talks were held in Vienna from 17 to 21 February 1976. In April 1976 written proposals on the various aspects of the Cyprus problem were exchanged between the two communities. Since then no further meeting has taken place between the two representatives of the communities in the talks, who are now Mr Papadopoullos and Mr Onan.

18. The Cyprus problem has many facets and elements - international and national, political, social, psychological, economic, humanitarian. Therefore the problem of human rights protection raised by the present applications is only one element amongst a complexity of elements.

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(1) Appendix V to this Report, cf para. 13 above.
(2) Appendix VI.
(3) Appendix VII.
(4) Appendix VIII.
(5) Appendix IX.
(6) Appendix X.
(7) Appendix XI.
(8) Appendix XII.
(9) See para. 17 below.
(10) See para. 14 above.
(11) Cf para. 178 below.

Chapter 2 - Substance of the Applications

a) Application No. 6780/74

19. On 19 September 1974 the applicant Government submitted this application to the Commission in the following terms:

"1. The Republic of Cyprus contends that the Republic of Turkey has committed and continues to commit, in the course of the events outlined hereinafter, both in Cyprus and Turkey, breaches of Arts. 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art. 1 of the First Protocol and of Art. 14 of the Convention in conjunction with all the aforementioned Articles.

2. On 20 July 1974 Turkey, without prior declaration of war, has invaded Cyprus and commenced military operations in its territory, by means of land, sea and air forces, and until 30 July 1974 has occupied a sizeable area in the northern part of Cyprus.

3. On 14 August 1974 by further military operations Turkey extended its occupation to about 40 percent of the territory of the Republic of Cyprus, and continues to remain in occupation of such territory.

3. In the course of the said military operations and occupation, Turkish armed forces have, by way of systematic conduct and adopted practice, caused deprivation of life, including indiscriminate killing of civilians, have subjected persons of both sexes and all ages to torture, inhuman and degrading treatment and punishment, including commission of rapes and detention under inhuman conditions, have arrested and are detaining in Cyprus and Turkey hundreds of persons arbitrarily and with no lawful authority, are subjecting the said persons to forced labour under conditions amounting to slavery or servitude, have caused through the aforesaid detention, as well as by deplacement of thousands of persons from their places of residence and refusal to all of them to return thereto, separations of families and other interferences with private life, have caused destruction of property and obstruction of free enjoyment of property, and all the above acts have been directed against Greek Cypriots only, due, inter alia, to their national origin, race and religion.

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20. The applicant Government gave further particulars of the above allegations in their written submission of 15 November 1974 (entitled "Particulars of the Application"), at the hearing on 22 and 23 May 1975 and in the subsequent proceedings before the Commission and its Delegation.

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b) Application No. 6950/75

21. On 21 March 1975 the applicant Government submitted this application to the Commission in the following terms:

"1. The Republic of Cyprus contends that the Republic of Turkey has committed and continues to commit, since 19 September 1974 when Application No. 6780/74 was filed, in the areas occupied by the Turkish army in Cyprus, under the actual and exclusive authority and control of Turkey (as per Paras. 12, 18 and 19 of the Particulars of Application No. 6780/74 pending before the Commission of Human Rights) breaches of Arts. 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art. 1 of the First Protocol and of Art. 14 of the Convention in conjunction with all the aforementioned Articles.

2. Turkey, since 19 September 1974, continues to occupy 40% of the Territory of the Republic of Cyprus, seized as described in the Particulars of the said Application ...

3. In the said Turkish occupied areas the following atrocities and crimes were committed by way of systematic conduct by Turkey's state organs in flagrant violation of the obligations of Turkey under the European Convention on Human Rights during the period from 19 September 1974 until the filing of the present Application:

(a) Murders in cold blood of civilians including women and old men. Also about 3,000 persons (many of them civilians), who were in the Turkish occupied areas, are still missing and it is feared that they were murdered by the Turkish army.

(b) Wholesale and repeated rapes. Even women of ages up to 80 were savagely raped by members of the Turkish forces. In some areas forced prostitution of Greek Cypriot girls continues to be practised. Many women who remained in the Turkish occupied areas became pregnant as a result of the rapes committed by the Turkish troops.

(c) Forcible eviction from homes and land. The Greek Cypriots who were forcibly expelled by the Turkish army from their homes (about 200,000) as per Para. 20 C of (the Particulars of) Application No. 6780/74, are still being prevented by the Turkish army to return to their homes in the Turkish occupied areas and are refugees in their own country living in open camps under inhuman conditions. Moreover, the Turkish military authorities continue to expel forcibly from their homes the remaining Greek Cypriot inhabitants in the Turkish occupied areas most of whom are

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forcibly transferred to concentration camps. They are not even allowed to take with them their basic belongings. Their homes and properties have been distributed amongst the Turkish Cypriots who were shifted from the southern part of Cyprus into the Turkish occupied areas as well as amongst many Turks who were illegally brought from Turkey in an attempt to change the demographic pattern on the Island.

(d) Looting by members of the Turkish army of houses and business premises belonging to Greek Cypriots continues to be extensively practised.

(e) Robbery of the agriculture produce and livestock, housing units, stocks in stores, in factories and shops owned by Greek Cypriots and of jewellery and other valuables found on Greek Cypriots arrested by the Turkish army continues uninterrupted. The agricultural produce belonging to Greek Cypriots continues to be collected and exported directly or indirectly to markets in several European countries. Nothing belonging to the Greek Cypriots in the Turkish occupied areas has been returned and no compensation was paid or offered in respect thereof.

(f) The seizure, appropriation, exploitation and distribution of land, houses, enterprises and industries belonging to Greek Cypriots, as described in Para. 20 F of the Particulars of Application No. 6780/74 continues.

(g) Thousands of Greek Cypriot civilians of all ages and both sexes are arbitrarily detained by the Turkish military authorities in the Turkish occupied areas under miserable conditions. For this purpose additional concentration camps were established. The report mentioned in ... the observations of the Cyprus Government on the admissibility of Application No. 6780/74 describes the conditions of some cases of such detention. The situation of most of the detainees is desperate.

(h) Greek Cypriot detainees and inhabitants of the Turkish occupied areas, including children, women and elderly people continue to be the victims of systematic tortures and of other inhuman and degrading treatment, e.g. wounding, beating, electric shocks, lack of food and medical treatment, etc.

(i) Forced labour. A great number of persons detained by the Turkish army, including women, were and still are made during their detention, to perform forced and compulsory labour.

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(j) Wanton destruction of properties belonging to Greek Cypriots including religious items found in the Greek Orthodox Churches.

(k) Forced expatriation of a number of Greek Cypriots living in the Turkish occupied areas, to Turkey.

(l) Separation of families. Many families are still separated as a result of some of the crimes described above such as detention and forcible eviction.

4. All the above atrocities were entirely unconnected with any military operations. They were all committed at a time when no military operations or any fighting whatsoever was taking place.

5. The aforementioned atrocities and criminal acts were directed against Greek Cypriots because of their ethnic origin, race and religion. The object was to destroy and eradicate the Greek population of the Turkish occupied areas so as to move therein Turks, thus creating by artificial means a Turkish populated area in furtherance of Turkey's policy for the formation of the so-called 'Turkish Cypriot Federated State'. In pursuance of this policy the members of the Turkish army who took part in the invasion (about 40,000) and their families have been recently declared as subjects of the illegally and unilaterally proclaimed 'Turkish Cypriot Federated State', i.e. the Turkish occupied areas of Cyprus, with the official blessing of Turkey and have occupied the properties belonging to the Greek Cypriots.

6. No remedy in the Turkish Courts was under the circumstances likely to be effective and adequate for the atrocities and crimes in question. In any case all the above atrocities and crimes were committed under such circumstances which excuse the failure to resort to any domestic remedy for the purposes of Art. 26 of the Convention.

7. The situation resulting from Turkey's occupation of the areas in question affected also the rights and freedoms of the Turkish Cypriots in those areas including those who, in furtherance of Turkey's political aims, were shifted thereto from the southern part of Cyprus where they have their homes and properties.

8. All the above atrocities and criminal acts can be proved by evidence including evidence of eye witnesses. Other sources of evidence as to the above matters are international organisations like the United Nations and the International Red Cross.

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9. Further particulars of the above violations of human rights, including statements by witnesses, will be made available as soon as possible.

10. It should be mentioned that it was not possible until now to ascertain in full the magnitude of the savage crimes perpetrated by Turkey in the Turkish-controlled areas as these areas are still sealed off and the Turkish military authorities do not allow free access to them even by UNFICYP and humanitarian organisations.

....."

22. The applicant Government gave further particulars of the above allegations at the hearing on 22 and 23 May 1975, in their written submissions of 14 July 1975 (entitled "Particulars of the Application") and in the subsequent proceedings before the Commission and its Delegation.

c) Statement of the respondent Government

23. The respondent Government, in a letter of 27 November 1975, declared that "Turkey cannot be required to accept the Greek Cypriot administration as applicant, since there is no authority which can properly require the Turkish Government to recognise against its will the legitimacy of a government which has usurped the powers of the State in violation of the Constitution of which Turkey is a guarantor." It followed in the Government's view "that the function which is the Commission's principal task under Art. 28 of the Convention on Human Rights, namely of placing itself at the disposal of the parties with a view to securing a friendly settlement, cannot be discharged, for the simple reason that the Turkish Government cannot agree to enter into talks with the representatives of an administration which it is entirely unable to recognise as a legal authority empowered to represent the Republic of Cyprus." The Government stated that they were therefore "unable to take part in the proceedings on the merits before the Commission. Since the press communiqué publishing the Commission's decision on admissibility was issued, the Turkish Government has in fact categorically refrained from participating in any of the Commission's activities. In this connection, it should be emphasised that the remarks made by Ambassador Günver, the new Permanent Representative of Turkey to the Council of Europe, during a courtesy call which he paid to the President of the Commission, although they were included in the case file in the form of a note drafted by the Commission, can in no way be interpreted as participation by my Government in the Commission's examination of the merits of the case." (1)

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(1) Translation from the French original by the Council of Europe. The full text of this letter is reproduced in Appendix II to this Report.

Chapter 3 - Proceedings before the Commission

24. A schedule of the proceedings before the Commission is attached as Appendix XIII to this Report and an account of the Commission's unsuccessful attempts to reach a friendly settlement is given in Appendix XV which has been produced as a separate document.

The following is an outline of the proceedings.

a) Proceedings on admissibility

25. Application No. 6780/74 was introduced on 19 September 1974 and on the President's instructions communicated on the following day to the respondent Government for observations on admissibility.

The Commission considered the application on 30 September and on 1 October 1974 decided that the applicant Government should be invited to submit further details.

26. The applicant Government's "Particulars of the Application" of 15 November and the respondent Government's observations of 21 November on the admissibility of the application were examined by the Commission on 13 and 14 December 1974. The Commission decided that the respondent Government, and subsequently the applicant Government, should be invited to submit such further observations in writing as they might wish to make.

27. On 20 March 1975 the Commission, having regard to the respondent Government's further observations of 22 January and the applicant Government's reply of 27 February, decided to hold a hearing on the admissibility of the application on 22 and 23 May 1975.

28. Application No. 6950/75 was introduced on 21 March 1975 and on the Commission's instructions communicated on 25 March to the respondent Government for observations on admissibility.

On 21 May 1975 the Commission considered the application, the respondent Government's observations of 24 April and the applicant Government's reply of 10 May 1975. The Commission decided that the two applications should be joined and that the Parties should be invited at the hearing to make oral submissions on the admissibility of both applications.

29. The Commission heard the Parties' oral submissions on both applications on 22 and 23 May and deliberated on 23, 24 and 26 May 1975. On 26 May it declared the applications admissible.

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The Parties were informed of this decision on the same day. The full text of the decision (1) was approved by the Commission on 12 July and communicated to the Parties on 16 July 1975.

b) Proceedings on the merits

30. For the purpose of carrying out its tasks under Art. 28 of the Convention the Commission on 28 May 1975 set up a Delegation composed of the President, Mr. Fawcett, and five other members, MM. Ermacora, Busuttil, Frowein, Jörundsson and Trechsel.

On 30 May 1975 the Delegation adopted a provisional programme for ascertaining the facts of the case and conducting any necessary investigations under Art. 28 (a). This was communicated to the Parties who were invited to meet the Delegation in June 1975.

31. In a press communiqué of 30 May 1975 (2) the respondent Government, reiterating their view that "the Greek Cypriot Administration cannot by itself represent the Republic of Cyprus", declared that the Commission's decision on the admissibility of the applications would not influence this attitude. Accordingly "the Turkish Government will not accept the Greek Cypriot Administration as the Government of Cyprus (and) as a party in the application(s)".

In a communication of 6 June 1975 the respondent Government, referring to the above declaration, submitted that proceedings (under Art. 28) could not start until they had received the final text of the Commission's decision on the admissibility.

32. The President, having consulted the other members of the Delegation, decided on 10 June 1975 that the meeting with the Parties should be maintained on the ground that the reasoning of the Commission's decision on admissibility was not relevant for the purpose of the meeting.

The respondent Government in a communication of 16 June 1975 invoking Rule 42 (4) of the Commission's Rules of Procedure (3), maintained their position.

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(1) Appendix I to this Report.

(2) Issued by the Permanent Representative of Turkey to the Council of Europe. (The Commission's press communiqué stating that the applications had been declared admissible was released on the same day.)

(3) "The decision of the Commission shall be accompanied by reasons. It shall be communicated by the Secretary of the Commission to the applicant and, except for the case provided for in paragraph 1 of this Rule or where information has been obtained from the applicant only, to the High Contracting Party concerned."

33. At the Delegation's meeting on 19 June 1975 the applicant Government's representatives submitted suggestions concerning the Delegation's provisional programme (1). The respondent Government were not represented.

The Delegation decided to visit Cyprus in September in order to begin its investigation. Details of this decision were communicated to the Parties who were also informed that the full text of the Commission's decision on admissibility, drafted on the basis of its deliberations in May, would be approved at the Commission's July session and communicated to the Parties immediately thereafter. In accordance with the Commission's practice, however, proceedings under Art. 28 could be started before this communication had taken place; this was not excluded by the Convention nor by Rule 42 (4) of the Rules of Procedure.

34. In a telex communication of 26 June 1975 the applicant Government contended that Turkey had, in disregard of the Commission's pending proceedings, committed further violations of the Convention, in particular in Famagusta. In a communication of 2 July the applicant Government complained inter alia of expulsions of Greek Cypriots from the north of Cyprus by Turkish military authorities.

35. The full text of the decision on the admissibility of the applications (2) was approved by the Commission on 12 July and communicated to the Parties on 16 July 1975.

On the Delegation's proposal the Commission at the same time suggested to the respondent Government that a meeting for the discussion of procedural questions be held before 16 August 1975 between representatives of the Government and members of the Delegation; the applicant Government would also be invited to take part.

The respondent Government did not reply to this invitation and the meeting did therefore not take place.

36. The Particulars of Application No. 6950/75 were filed by the applicant Government on 1 August 1975.

37. On 1 September 1975 the Delegation (3) met in Nicosia. Between 2 and 6 September 1975 it heard seventeen witnesses, visited two refugee camps and obtained further evidence. Details of this investigation are given in Chapter 5 below.

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(1) Mentioned at para. 30 above.

(2) Appendix I to this Report.

(3) Mr Frowein did not participate in this investigation.

The respondent Government did not participate in the above investigation and the Delegation therefore decided to hear all witnesses in the absence also of the applicant Government's representatives.

The applicant Government furnished facilities for the investigation, in accordance with Art. 28 para. (a) in fine of the Convention. The respondent Government, although requested to do so, did not offer or provide any facilities.

38. Details of this development were as follows: On 1 September 1975 the President and Principal Delegate rang the Turkish Embassy in Nicosia and asked whether the respondent Government would send a representative and whether the Delegates could enter the northern area of Cyprus if they desired to do so. The acting head of mission replied that the Turkish Government maintained their attitude that the taking of evidence by the Delegation was ultra vires given the Government's objections to the Commission's decision on admissibility; and that only the authorities of the Turkish Federated State were competent to authorise taking of evidence in or visits to that area. He advised approach to Mr. Unel or Mr. Orek, the latter designated as acting President of the Federated State, in the absence abroad of Mr. Denktash.

Mr. Orek made a broadcast on 1 September 1975 criticising the one-sided character of the Commission's investigation. After a telephone call by the Principal Delegate he agreed to a meeting. On 4 September MM. Tawcett and Ermacora, with the approval of the Delegation, visited Mr. Orek in the northern sector of Nicosia. It was made clear to him, and in a subsequent broadcast he confirmed it, that the Delegates were visiting him, not in his capacity as designated acting President, but to invite him, as a leading Turkish Cypriot, to give evidence to the Delegation or to indicate persons who could give evidence or places that could be usefully visited, in particular Famagusta, in relation to the present applications. His response was that he was not prepared to do or authorise any of these things unless the Commission's investigation were extended to cover complaints by Turkish Cypriots against the regime in Cyprus, since 1963, and in particular in respect of certain incidents at Tokhni and Maratha in 1974. It was pointed out to him that, for various reasons explained, these complaints were outside the competence of the Commission and its Delegation, unless they were relevant to matters raised in the present applications to the Commission or made the subject of distinct applications under Art. 24 of the Convention.

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39. The Principal Delegate also visited Mr. Gorgé, Senior Legal and Political Adviser to UNFICYP, in particular to see whether it or the United Nations could assist the Commission's investigation by provision of evidence or otherwise, and in particular reports of U.N. inquiries into alleged atrocities both on the Greek Cypriot and Turkish Cypriot side. In a long conversation, in which Mr. Gorgé surveyed the whole situation in the light of his long experience in Cyprus, he explained that it was essential that the absolute impartiality of UNFICYP be secured and that it should therefore not even appear to be assisting an investigation tending against one side or the other in the island. He regretfully said that he could not therefore offer evidence or propose witnesses to the Delegation.

40. On 11 September 1975 the Delegation communicated to the respondent Government the evidence of one of the witnesses heard in Cyprus who, according to his statements, had together with other Greek Cypriots been deported by the Turkish armed forces to a prison in Adana in Turkey (1). The Government were invited to furnish facilities for a visit by the Delegation to that prison for the purpose of hearing witnesses and to name any witnesses which they wished to call.

On 6 October 1975 the Permanent Representative of Turkey informed the President of the Commission that his Government could not accept any procedure which implied recognition of the "Greek Cypriot Administration". He added that the testimony received was false and that the Government would not provide facilities for an enquiry at Adana (2).

41. Further particulars of the applications were filed by the applicant Government on 17 September and 3 October 1975.

42. On 6 and 8 October 1975 the Commission considered the applications in the light of the evidence obtained in Cyprus. The Commission decided to invite the Parties' comments on that evidence and to request them to indicate whether they wished to propose further evidence and to make final submissions on the merits of the applications at a hearing before the Commission.

43. The applicant Government, in a telex message of 22 October 1975, complained that a large number of Turks from Turkey were being moved into the northern area of Cyprus.

On 10 November 1975 the Government stated that they did not want to make any further submissions.

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(1) Witness Pirkettis, see Verbatim Record, pp. 40-57.

(2) A note on this meeting is reproduced at Appendix XIV.

44. The respondent Government, in their letter of 27 November 1975 (1), declared that Turkey "cannot be required to accept the Greek Cypriot Administration as applicant" and that the Turkish Government were consequently unable to participate in any proceedings under Art. 28 of the Convention in the present case.

45. The applicant Government replied on 10 December 1975 that the views advanced by the respondent Government had already been dealt with in the Commission's decision on the admissibility of the applications. The applicant Government considered that legal proceedings such as the present ones, "whose object is to bring before the Commission alleged violations of the public order of Europe and to ensure the observance of the legal engagements undertaken under the European Convention on Human Rights, cannot depend in any way on whether the State Party against which the charges of violations of human rights are brought before the Commission, does or does not recognise the Government which brings such charges".

46. On 18 and 19 December 1975 the Commission continued its examination of the applications in the light of the Parties' above communications. It decided to terminate its investigation and, for reasons set out in the following Chapter, to draft a Report under Art. 31 of the Convention.

47. On 10, 11 and 12 March 1976 the Commission considered parts of its draft Report. It decided to invite the Parties to submit such observations as they might wish to make on the applicability of the Convention to a situation of military action as in the present case, bearing in mind Art. 15.

48. On 14, 15, 17 and 18 May 1976 the Commission continued its examination of the draft Report in the light of the applicant Government's communications of 15 April and 10 May and the respondent Government's communication of 15 April 1976. It decided not to hold a hearing on the applicability of the Convention to a situation of military action as in the present case, as requested by the applicant Government.

49. On 8, 9 and 10 July 1976 the Commission further continued its consideration of the draft Report. It adopted the present Report on 10 July.

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(1) See para. 23 above and Appendix II.

Chapter 4 - Application of Arts. 28 and 31 of the Convention in the circumstances of the present case

50. The Commission, noting the respondent Government's refusal to participate in the proceedings provided for by Art. 28 of the Convention, has considered the procedure to be followed in the circumstances of the present case.

51. Following its decision on the admissibility of the applications, the Commission had a double task under Art. 28:

- under para. (a), with a view to ascertaining the facts, it had to "undertake together with the representatives of the parties an examination of the petition(s) and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission";

- under para. (b), it had to "place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention".

52. Where proceedings in an admitted application are not terminated by such a friendly settlement, or by a Commission decision under Art. 29 of the Convention or Rule 49 of its Rules of Procedure, the Commission further, under Art. 31 of the Convention, has to "draw up a Report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention".

53. Neither the Convention nor the Commission's Rules of Procedure contain an express provision for the case where a respondent party, as in the present applications, fails to co-operate in the Commission's proceedings under Art. 28. In dealing with this situation under Art. 28 the Commission has therefore had regard to its practice in previous cases and, in particular, to the procedure followed in the First Greek Case. Moreover, although their functions under the Convention differ in some respects, the Commission has also noted Rule 49 of the Rules of the European Court of Human Rights (1).

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(1) "Where a Party fails to appear or to present its case, the Chamber shall ... give a decision in the case."

Cf. also Art. 53 of the Statute of the International Court of Justice which states as follows:

"1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction ... but also that the claim is well founded in fact and law."

54. The Commission first observes that, in carrying out its task of establishing the facts of a case, it has to seek the parties' co-operation. This is clear from the terms of Art. 28 (a) which provides that the Commission shall undertake an examination of the petition "together with the representatives of the parties" and further states that the States concerned shall, after an exchange of views with the Commission, furnish all necessary facilities for any necessary investigation.

Art. 28 (b) further obliges the Commission to place itself at the parties' disposal with a view to securing a settlement.

55. It does not follow from either of these provisions, however, that a respondent party's failure to co-operate in proceedings under Art. 28 could prevent the Commission from completing, as far as possible, its examination of the application and from making a Report to the Committee of Ministers under Art. 31 of the Convention (1).

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(1) In four recent cases before the International Court of Justice the respondent Government failed to appear and the Court decided on the merits: Fisheries jurisdiction cases (United Kingdom of Great Britain and Northern Ireland v. Iceland, ICJ Reports 1974, p. 3; Federal Republic of Germany v. Iceland, ibid. p. 175) and Nuclear Tests cases (Australia v. France, ibid. p. 253; New Zealand v. France, ibid. p. 457). Para. 15 of the two latter judgments (at pp. 257 and 461) reads as follows:

> "It is to be regretted that the French Government has failed to appear in order to put forward its arguments on the issues arising in the present phase of the proceedings, and the Court has thus not had the assistance it might have derived from such arguments or from any evidence adduced in support of them. The Court nevertheless has to proceed and reach a conclusion, and in doing so must have regard not only to the evidence brought before it and the arguments addressed to it by the Applicant, but also to any documentary or other evidence which may be relevant. It must on this basis satisfy itself, first that there exists no bar to the exercise of its judicial function, and secondly, if no such bar exists, that the Application is well founded in fact and in law."

56. The above considerations are in conformity with the procedure adopted by the Commission in the First Greek Case and the Commission has followed the same procedure in the present applications, noting that the following elements are common to both cases:

- the respondent Government fully co-operated at the admissibility stage;

- an investigation under Art. 28 (a) of the Convention, though incomplete, was carried out. The Commission recalls in this connection that, in the First Greek Case, the Sub-Commission decided to terminate its visit to Greece on the ground that it had been prevented from hearing certain further witnesses and from inspecting a detention camp and a prison (1); during the subsequent proceedings the respondent Government refrained from submitting oral or written conclusions to the Sub-Commission (2).

57. The Commission has also had regard to the procedure which it adopted in the Second Greek Case, in its "Report on the Present State of the Proceedings" of 5 October 1970. Paras. 18 to 20 of that Report read as follows:

> "18. It is a general principle of judicial procedure in national legal systems, as well as before international tribunals, that a respondent party cannot evade the jurisdiction of a competent tribunal simply by refusing to take part in the proceedings instituted against it. It is a general principle of judicial procedure that a competent tribunal may give judgment by default. The Commission is of the opinion that this principle should also apply to its own proceedings in appropriate circumstances. If this were not so, a respondent party might find it too easy, and might even feel encouraged, to evade its obligations under the Convention simply by not entering an appearance before the Commission. To that extent, it may therefore be necessary to depart from the strict adherence to the above-mentioned principle, according to which the findings of the Commission should be based on submissions and evidence presented by both parties. The Commission would, however, even in such circumstances have to satisfy itself that the information before it is sufficient to express a well-founded opinion. There could be no question of automatically finding in favour of the applicant, irrespective of the circumstances of the case.

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(1) See para. 23 of the Commission's Report of 5 November 1969, Yearbook 12, p. 14.

(2) See paras. 29-31, 34-35 of the Commission's Report, ibid. pp. 16-17.

19. In the present case the circumstances are of a very particular nature. The Commission finds it necessary to recall that the denunciation of the Convention by the respondent Government and its withdrawal from the Council of Europe took place at a time when the Committee of Ministers had before it a proposal for the suspension of Greece from membership in the Council. After the Greek Government had announced its decision to withdraw, the Committee of Ministers on 12 December 1969 adopted Resolution (69) 51 in which it expressed its understanding that this Government would abstain from any further participation in the activities of the Council of Europe as from the same day, and concluded that on this understanding there was no need to pursue the procedure for suspension. Moreover, the Chairman of the Committee of Ministers reported to the Consultative Assembly of the Council of Europe on 29 January 1970 that it was the opinion of the majority of the Ministers' Deputies at their 186th Session that, from the date on which the above Resolution was adopted, 'Greece, while formally remaining a member of the Council of Europe until 31 December 1970, must be considered as being suspended de facto from its rights of representation, so that it can no longer take part in the work of the Council of Europe'.

20. Against this background, the refusal of the Greek Government to take part in the proceedings instituted before the Commission by the applicant Governments in the present case appears in a different light from the situation which might typically be expected to exist when a respondent Government fails to appear before the Commission. The general reasons which would normally prompt the Commission to 'give judgment by default', as indicated in paragraph 18 above, do not carry the same weight in the present circumstances, where the refusal of the respondent Government to appear before the Commission may in some way be connected with the general relationship between the Council of Europe and Greece."

58. The Commission considers that the circumstances described in the above Report are substantially different from the procedural situation in the present applications. It notes in this respect that Turkey, the respondent Party in these applications, is a member State of the Council of Europe and a High Contracting Party to the Convention on Human Rights, which continues to co-operate in the Committee of Ministers in matters relating to the application of this Convention.

59. The Commission therefore does not find it appropriate in the present applications to address an interim report to the Committee of Ministers. It concludes that it has the task to draw up a Report under Art. 31 of the Convention on the basis of the material now before it.

Chapter 5 - Evidence obtained

Introduction

60. The Commission was faced with special difficulties in its investigation which are described in Chapter 6 below.

61. The Commission's Delegation, in its provisional programme (1), considered that investigations should be carried out in such parts of Cyprus as might be necessary with a view to:

- finding out the best way of obtaining relevant evidence concerning the alleged violations, and

- hearing witnesses and visiting localities which might be useful for this purpose.

The Delegation therefore proposed to interview first a number of community leaders, e.g. mayors of localities in which violations of the Convention were alleged to have taken place, and to that effect:

- to invite the applicant Government to indicate a limited number of such persons and the alleged violations with which they were concerned, and

- subsequently to invite the respondent Government to propose relevant witnesses concerning the same allegations.

On the basis of the information so obtained the Delegation intended to fix the programme for its further proceedings.

62. At the Delegation's meeting on 19 June 1975 the applicant Government submitted a list of community leaders and other representative witnesses who, in the Government's view, could testify on the alleged violations in view of their capacity; the Government also made certain proposals as to localities to be visited by the Delegation.

63. During its visit to Cyprus from 2 to 6 September 1975 the Delegation heard 14 of the 29 witnesses proposed by the applicant Government. It also heard three further witnesses, who were refugees from the Kyrenia area, and members of the Delegation interviewed eleven refugees in refugee camps.

64. The respondent Government, although invited to do so, did not propose any witnesses or file other evidence (2).

65. The Commission's establishment of the facts in the present Report is based on submissions made and evidence received up to 18 May 1976 (3).

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(1) See para. 30 above.
(2) See paras. 40, 42 and 44 above.
(3) Cf para. 5 above.

I. Witnesses and persons interviewed

1. Witnesses

66. During its visit to Cyprus the Delegation heard the following witnesses (1) who had been proposed by the applicant Government in view of their capacity:

Mrs. S. Soulioti	Chairman of the Cyprus Red Cross Society, Nicosia
Mr. P. Stylianou	Chairman of the Pancyprian Committee of Enclaved Persons, Nicosia
Mr. A. Pirkettis	Member of the Pancyprian Association of Prisoners Expatriated and Detained in Turkey, Nicosia
Mr. P. Hadjiloizou	Inspector of Police in charge of investigations regarding complaints of Turkish atrocities, Athalassa, Nicosia
Dr. X. Charalambides	Physician, former Deputy Mayor of Kyrenia, Nicosia
Mr. A. Odysseos	Barrister-at-Law, former Chairman of the School Committee of Morphou, Nicosia
Dr. Hadjikakou	M.P., physician of Famagusta, now Larnaca
Mr. M. Savvides	M.P., President of the Cyprus Chamber of Commerce and Industry, Nicosia
Mr. A. Andronikou	Director-General of the Cyprus Tourism Organisation, Nicosia
Mr. L. Tryfon	Chairman of the Cyprus Land and Property Owners Association, Nicosia
Mr. A. Anastasiou	Director-General of the Ministry of the Interior and Defence, Nicosia
Mr. G. Iacovou	Director of the Special Service for the Care and Rehabilitation of Displaced Persons, Nicosia
Mr. J. Kaniklides	Barrister-at-Law, Larnaca, formerly Famagusta
Mr. A. Aginas	Commissioner of Co-operative Development, Nicosia.

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(1) Listed in the order in which they were heard.

67. The Delegation also heard as witnesses the following refugees from the Kyrenia area:

Mrs. M. Kyprianou, Nicosia, formerly Elia

Mr. V. Efthymiou, Nicosia, formerly Karavas

Mrs. S. Efthymiou, Nicosia, formerly Karavas.

68. All the above witnesses, with the exception of Mrs. Kyprianou, gave their testimony in English. A full verbatim record of the hearing of these witnesses has been produced as a separate document (1).

2. Persons interviewed

69. Members of the Commission's Delegation, through interpreters, interviewed eleven refugees in the camps at the orphanage school of Nicosia and at Stavros on 5 September 1975. The interviews are recorded in a separate document (2).

II. Other evidence

1. Inspection of localities

70. Members of the Delegation visited in Nicosia:

- the demarcation ("green line") separating the area controlled by the applicant Government from the north of the city;

- the refugee camps mentioned in para. 66 above.

2. Films

71. On 4 September 1975 the Delegation saw a set of short news films compiled and presented by the Cyprus Broadcasting Corporation, the subjects and sources of which were (3):

Subject	Source
Press conference of girls who alleged that they were raped (Date of filming - 25.8.1974)	CBC
Arrival of released prisoners of war brought from Adana (Date of filming - 27.10.1974)	CBC

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(1) Doc. 41.351.

(2) Addendum to the Verbatim Record of the hearing of witnesses (Doc. 41.967), pp. 1-15.

(3) Cf. ibid. p. 99.

Subject	Source
Interviews with three released P.O.W.s speaking of how they were treated. One described how P.O.W.s were killed	CBC
Interviews with people from Davlos and other villages of north-east Cyprus who alleged that they were expelled from their homes in June 1975	CBC
Interviews with woman from Kyrenia on her experiences (Date of filming - end of July 1974)	CBC
Arrival of people who had been interned in Gypsou, Veni and Vitsadha (Date of filming - November 1974)	CBC
Interview with wounded P.O.W. (He describes how he escaped death in mass execution and how he was later recaptured.)	CBC
Arrival of released P.O.W.s, relatives waiting	CBC
People enclaved in Turkish-held villages	RAI & VISNEWS

3. Reports, statements and other documents

a) Reports of other international bodies

72. The Commission has taken note of various reports on the events in Cyprus in 1974 and 1975 by the Secretary General of the United Nations and the Consultative Assembly of the Council of Europe which were publicly available (1).

b) Statements

73. Numerous statements by individuals were submitted by the applicant Government as evidence of the violations of the Convention alleged in the present applications. The names of the authors of these statements were omitted "for security reasons" but the Government offered to indicate them should the Commission so require, and three authors of such statements (2) have in fact been heard as witnesses by the Delegation.

c) Other documents

74. Further documents have been received from:

- the applicant Government in support of their submissions, and
- witnesses giving evidence before the Delegation (3).

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(1) See paras. 15 and 16 above.

(2) Mrs. Kyprianou and Mr. and Mrs. Efthymiou.

(3) See Addendum pp. 16-98.

75. Mr. Orek and the Turkish Information Office also gave the Delegates collections of reports and other publications on events in, and aspects of the administration of, Cyprus since 1963. These were received by the Principal Delegate who explained to the donors that they could not form part of the Commission's case-file unless they were submitted by the respondent Government and shown to be relevant to the present applications (1).

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(1) Cf. para. 58 above.

Chapter 6 - Difficulties arising in the establishment of the facts in the present case

76. Before examining the applicant Government's allegations (1), the Commission would draw attention to certain difficulties which, in the special circumstances of the present case, have arisen in the establishment of the facts, and to the solutions adopted to meet these difficulties.

I. Scope of the allegations

77. One of the characteristics of the present case is the sheer number of alleged violations of the Convention.

The Commission therefore had to restrict its investigation of alleged violations and has tested only a limited number of cases selected as representative.

II. Non-participation of the respondent Government in the proceedings on the merits

78. The respondent Government, as already stated (2), did not participate in the Commission's proceedings under Art. 28 (a) of the Convention: apart from the statement mentioned above (3), they did not make any submissions, or propose evidence, on the alleged violations, nor offer facilities for the Commission's investigation, as provided for in Art. 28 (a) in fine; the Commission's Delegation was refused entry into Turkey (4) and any co-operation by Turkish or Turkish Cypriot authorities for an investigation in the north of Cyprus (5).

79. In the absence of any submissions by the respondent Government the Commission, for the reasons stated above (6), proceeded with its establishment of the facts on the basis of the material before it.

III. Character of the evidence

80. Evidence relating to the applicant Government's allegations has to a great extent been provided in the testimony of witnesses named and in documents, including written statements, submitted by this Government. Moreover, all witnesses heard including those selected by the Delegation, were Greek Cypriots.

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(1) In Part II of this Report.
(2) Cf. para. 4 above.
(3) Para. 40 in fine.
(4) Cf. para. 40 in fine.
(5) Cf. para. 38.
(6) See Chapter 4.

81. Nevertheless, the evidence before the Commission, and the facts established on the basis of this evidence, cannot be seen as presenting a view of the events and incidents complained of mainly from the Greek Cypriot side. The Commission observes in this connection that:

- certain events and incidents referred to in the applications are in great part a matter of public knowledge. In particular, the massive movement of population from the northern to the southern part of Cyprus after 20 July 1974 is an undisputable fact which, as such, calls for no particular investigation;

- the Commission has based its findings in part on reports of other international organisations, in particular the United Nations;

- the witnesses heard by the Commission's Delegation in Cyprus testified, with little exception, with a restraint and objectivity that gave credibility to their testimony; some of them (1) confirmed a number of statements in the Particulars of the Applications about which they could not have had any direct knowledge;

- in the evaluation of the evidence before it, the Commission has refrained from drawing any conclusions from the fact that the respondent Government, despite every opportunity being offered to them, failed to make any statements, or to propose counter-evidence, on the applicant Government's allegations.

82. The Commission further observes in this connection that, as a full investigation of all the facts has not been possible, it will in its establishment of the facts distinguish between:

- matters of common knowledge;

- facts established to the satisfaction of the Commission;

- evidence which ranges from bare indications, the establishment of a prima facie case to strong indications (2);

- allegations for which no relevant evidence has been found.

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(1) MM. Pirkettis, Kanikledes, Kyprianou, and Mr and Mrs Ephtymiou.

(2) Cf the Commission's Report in the First Greek Case, Yearbook 12, p. 504.

IV. Responsibility of Turkey under the Convention

83. In its decision on the admissibility of the present applications, the Commission found that the Turkish armed forces in Cyprus brought any persons or property there "within the jurisdiction" of Turkey, in the sense of Art. 1 of the Convention, "to the extent that they exercise control over such persons or property".

84. In the light of its above decision, the Commission has examined, with regard to each of the complaints considered (1), whether or not the acts committed were imputable to Turkey under the Convention.

85. The Commission finally observes that the substance of the present applications required it to confine its investigation essentially to acts and incidents for which Turkey, as a High Contracting Party, might be held responsible. Alleged violations of the Convention by Cyprus could be taken into account as such only if Turkey or another High Contracting Party had raised them in an application to the Commission under Art. 24 of the Convention (2).

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(1) In Part II of this Report.

(2) Cf para. 38 in fine.

PART II - EXAMINATION OF THE ALLEGATIONS IN THE TWO APPLICATIONS

Introduction

86. The Commission will examine the applicant Government's allegations in the following order:

- displacement of persons (Art. 8 of the Convention) - Chapter 1;
- deprivation of liberty (Art. 5) - Chapter 2;
- deprivation of life (Art. 2) - Chapter 3;
- ill-treatment (Art. 3) - Chapter 4;
- deprivation of possessions (Art. 1 of Protocol No. 1) - Chapter 5;
- forced labour (Art. 4 of the Convention) - Chapter 6.

87. With regard to each item the Report will set out:

- the relevant submissions of the Parties,
- the relevant Article of the Convention;
- the evidence obtained;
- an evaluation of the said evidence;
- the Commission's opinion as to the responsibility of Turkey under the Convention for the acts complained of;
- the Commission's conclusion as to the alleged violation.

88. The Commission, for the reason stated above (1), had to restrict its investigation of the violations alleged in the present case. It therefore has not considered as separate issues the applicant Government's complaints concerning:

- searches of homes (Art. 8 of the Convention),
- interference with correspondence (Art. 8),
- detention of Greek Cypriots arrested at the demarcation line (Art. 5).

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(1) See para. 77.

Chapter 1 - Displacement of persons

Introduction

89. Many of the applicant Government's allegations of violations of human rights by the Turkish armed forces in the Northern part of Cyprus are closely related to the displacement, on a massive scale, of the Greek Cypriot population of that area. The Commission has therefore first considered whether the alleged expulsion of some 200,000 Greek Cypriot citizens and/or the alleged refusal to allow their return to their homes in the northern area, constitute, if established, in themselves violations of the Convention.

90. Further alleged violations of the Convention arising out, not of the displacement as such, but of particular circumstances of alleged measures of expulsion in individual cases, such as ill-treatment, detention, loss of property, etc., must be distinguished from the displacement itself and will be dealt with in the relevant context in subsequent chapters.

91. Finally, as regards the displacement, the Commission considers that a distinction should be made between:

- the movement of persons provoked by the military action of Turkey;
- measures of displacement not directly connected with the said military action (e.g. eviction from homes, expulsions and transfers across the demarcation line);
- the refusal to allow the return of refugees and expellees, and
- the separation of families brought about by measures of displacement.

This distinction, which is not to be found in the applicant Government's submissions, will be observed by the Commission in its presentation and evaluation of the evidence obtained, and in its opinion on the legal issues.

A. Submissions of the Parties

I. Applicant Government

92. The applicant Government submitted that, as far ago as 1964 Turkey had pursued a policy with regard to Cyprus which envisaged a compulsory exchange of population between the Greek and Turkish Cypriot communities in order to bring

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about a state of affairs in which each of the two communities would occupy a separate part of the island. This policy became publicly known as the so-called Attila plan (1).

93. The military action of 1974, and in particular its second phase between 14 and 16 August 1974, was designed to implement this plan by the use of force (2). The atrocities committed in the course of this action constituted part of the tactics to bring about the geographical partition of Cyprus with the object of destroying and eradicating the Greek population of the occupied areas and creating a Turkish populated area (3).

94. The actions of the Turkish armed forces included:

- the deportation to Turkey of men who were taken prisoners(4);

- the transport of persons (mostly women, children and old men) to the demarcation line and their expulsion to areas controlled by the applicant Government (5). The Government specially mentioned the expulsion in this manner of about 600 persons from the villages of Karmi, Trimithi, Thermia, Kazaphani and Ayios Georgios on 2 August 1974 (6), and of 778 persons, mostly from the Karpasia area, between 27 and 30 June 1975 (among whom were the last inhabitants of the villages Ayios Serghios, Gerani, Akhna, Engomi, Kalopsida, Davlos, Ayios Georgios and Spatharikon) (7). Further cases of expulsion all godly happened in 1976, affecting 1,051 persons including children and elderly people from Kyrenia and Karpasia area between January and May 1976 (8);

- the detention of persons who had stayed in the areas controlled by the Turkish armed forces in "concentration camps" where they were forced to live under such miserable conditions that they reached a stage of complete despair, and had to apply to move to the areas controlled by the applicant Government in order to alleviate their condition (9). ./.

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(1) Cf. Particulars I, para. 9.
(2) Particulars I, para. [illegible]
(3) Particulars I, paras. 22, 24.
(4) Particulars I, para. [illegible]; Particulars II, para. 12 k; as regards [illegible] also below, Chapters 2 C and 4 B.
(5) Particulars I, paras. 20 [illegible] and [illegible] B (iv); Particulars II, para. 12 c ([illegible]).
(6) Particulars I, para. 22 [illegible], second sub-paragraph.
(7) Telex communication from the applicant Government of 2 July 1975.
(8) Telex communication from the applicant Government of 10 May 1976.
(9) Particulars I, paras. 20 [illegible] and 23; Particulars II, para. 12 c ([illegible]). See also below Chapters 2 B and 4 B.

- the forcing of persons either by the threat of arms, or by inhuman conditions of life imposed on them by the Turkish military authorities, to sign applications for their transportation to areas controlled by the applicant Government (1);

- the creation of such conditions in the north of Cyprus that Greek Cypriots would not wish to return there even if they were allowed to do so. The applicant Government complained in particular of faits accomplis such as the allocation of Greek Cypriot homes and properties to Turkish Cypriots and Turkish settlers (2);

- the continued refusal to allow the return of Greek Cypriots to their homes in the area controlled by the Turkish forces (3);

95. The result of these measures was that out of a total population of about 200,000 Greek Cypriots in the north there remained only about 14,000 in September 1974, and about 8,000 in July 1975. The applicant Government stressed that the remainder (about 40% of the island's Greek population) did not move to the south of their own volition, in the exercise of the "freedom to move to the south" proclaimed by the Turkish side, but were all expelled by the Turkish army and not allowed to return (4).

96. The applicant Government also referred to certain statements which were said to have been made by Turkish officials. Thus the Chief Spokesman of the Turkish Foreign Ministry, Mr. Semi Akbil, was reported to have stated that the remaining 8,000 Greek Cypriots in the north might also have to be moved. Mr. Baruteu, Head of the Cyprus and Greek Department of the same Ministry, had modified this statement by saying that only those Greek Cypriots who had applied for permission to leave were being moved, and that this was not expulsion (5).

97. According to the applicant Government, however, some of the persons concerned were forced to sign applications for their transportation to the Government controlled areas; the majority did not even sign such applications and persistently refused to abandon their homes. In fact, all of them were displaced by force (6).

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(1) Particulars II, para. 12 C (ii); see also the applicant Government's telex of 10 May 1976 for cases of ill-treatment which allegedly happened in 1976.
(2) Particulars II, paras. 20 F and 24; Particulars II, para. 12 f; telex communications from the applicant Government of 26 June 1975, para. B, and of 22 October 1975, according to which the movement of Turkish settlers had been intensified and was done on a systematic and big scale basis "with the object of altering the racial balance of the island".
(3) Particulars I, para. 20 C; Particulars II, para. 12 c.
(4) Appendix "A" to applicant Government's observations on the admissibility of Application I, para. 11.
(5) Telex communication from the applicant Government of 2 July 1975.
(6) Ibid.

II. Respondent Government

98. The respondent Government who, for the reasons stated above (1), did not take part in the proceedings on the merits, have not made any statements with regard to these allegations.

B. Relevant Article of the Convention

99. The Commission considers that the displacement of persons from their homes, as complained of in the present applications, raises issues under Art. 8 of the Convention (interference with their homes and their private and family life). It notes in this connection the applicant Government's view that the "displacement of thousands of persons from their places of residence and refusal to all of them to return thereto" caused "separations of families and other interferences with private life" (2).

100. Art. 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

C. Evidence obtained

I. General information concerning displaced persons in Cyprus

101. In view of the scope and importance in the present applications of the complaints concerning the displacement of Greek Cypriots from the north of Cyprus, following the Turkish military action in 1974, the Commission has first sought to obtain some general information concerning the displacement of persons in Cyprus.

102. The Commission notes that the displacement of persons in Cyprus, as a consequence of the 1974 events, was on a very large scale and covered both Greek Cypriots and Turkish Cypriots, but an overwhelming majority of the former. The figures of Greek Cypriots displaced to the south are about 180,000 as will be set out below; the figures of Turkish Cypriots who moved to the north

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(1) See Part I, para. 23.
(2) Application I, para. 3.

are of the order of 40,000 including approximately 17,000 transferred under negotiated agreements (1). The overall situation in respect of the displaced persons in Cyprus has been described in the Forni and Karasek reports to the Parliamentary Assembly of the Council of Europe (2), as well as the progress reports of the Secretary General of the United Nations on developments in Cyprus (3).

103. The fact that the overwhelming majority of the Greek Cypriot population has left the northern area of Cyprus as a consequence of the Turkish military action in 1974 is common knowledge and needs no corroboration by specific evidence. In this respect the Commission would simply refer to the Council of Europe and United Nations reports mentioned above (4) and to the visit of its Delegates, on 5 September 1975, to two refugee camps in the area controlled by the applicant Government (5).

104. As regards the number of Greek Cypriot displaced persons, the Commission's Delegation heard two witnesses who hold responsible posts concerned with relief to refugees in Cyprus: Mr George Iacovou, Director of the Special Service for the Care and Rehabilitation of Displaced Persons (an organisation set up by the applicant Government and operative since 20 August 1974), and Mrs Stella Soulioti, Chairman of the Cyprus Red Cross Society.

Mrs Soulioti stated that there were some 26,000 refugees after the first phase of the Turkish military operation (3 August 1974), and 170,000 after the second phase (22 August 1974). She estimated that the number must have risen further to about 210,000 by September 1975, but admitted that her figures could be less reliable than those to be obtained from Mr Iacovou (6).

Mr Iacovou stated that already before the creation of the Special Service he had been responsible for registering the persons who had become displaced during the first phase of the

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(1) About 9,000 were moved pursuant to an Anglo-Turkish arrangement in January 1975 from the British Sovereign Base Area at Episkopi where they had sought refuge, and about 8,000 were moved pursuant to the inter-communal agreement reached of the third round of the Vienna talks in August 1975.

(2) See Part I, para. 15 above.

(3) UN Docs. S/11353 and Add. 1-33; S/11468 and Add. 1-4; S/11488/Add. 2; S/11568; S/11717 covering the period up to June 1975.

(4) See para. 102 above.

(5) The Refugee Camp Orphanage School, Nicosia and Refugee Camp Stavros; cf interviews with persons in these camps on pp. 1-15 of the Addendum.

(6) Verbatim Record, pp. 5-6. Further figures mentioned by Mrs Soulioti: 22.7.1974 - 3,000 refugees, 30-7-1974 - 15,000.

military operation and that there had been about 30,000 refugees at that time. He further said that according to the Special Service's records there were 182,827 displaced persons in September 1975, 135,716 of whom were not self-supporting and received aid from the Special Service, so that he knew their number very intimately. Originally there had been even 203,000 needy refugees, but many persons who had left areas in the south bordering the territories controlled by Turkey had in the meanwhile returned there (1).

105. Of the reports mentiond above (2), the Forni report of the Parliamentary Assembly, referring to data published by the applicant Government, states that the number of Greek Cypriot refugees fell from 203.600 on 1 September 1974 to 179,000 on 21 November 1974, 24,000 people having returned to their homes in Nicosia or near the Turkish-held zone (3).

According to a UN report of 9 June 1975 the number of displaced Greek Cypriots on that date was 182,000, their total number having increased by some 3,000 since 21 November 1974, primarily because of the transfer of Greek Cypriots from the north to the south (4).

106. The methods and process of displacement of Greek Cypriots have been described by many witnesses. The Commission here notes the testimony of witnesses heard by its Delegation in Cyprus who had left the northern area as a consequence of the military events in the summer of 1974, and the statements of the persons interviewed in the refugee camps. Some of them also gave a more general account of the population movement as they had seen it. Further evidence is contained in many of the written statements submitted by the applicant Government. Finally, there are some relevant UN documents such as UNFICYP reports on certain incidents or the reports of the Secretary General of the United Nations on intercommunal talks which took place under his auspices.

II. The movement of persons provoked by the military action of Turkey in the two phases of actual fighting (20-22 July, and 14-16 August 1974)

107. It appears from the evidence before the Commission that the majority of the displaced persons are persons who fled from their homes in the north of Cyprus because of the military action of Turkey in the two phases of actual fighting (20-22 July 1974 and 14-16 August 1974).

108. According to witness Mrs Soulioti the 170,000 refugees who had existed by 22 August 1974 were very largely people who had fled themselves (5). This was confirmed by Mr Iacovou who

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(1) Verbatim Record, p. 159.
(2) Para. 102 above.
(3) Council of Europe Doc. 3566, para. 13.
(4) UN Doc. S/11717, para. 34.
(5) Verbatim Record, p. 5.

pointed to the psychological condition of these people (1). He mentioned that even the Greek Cypriot population of places that were never reached by Turkish troops had ebbed away and had only returned to their homes after the actual fighting stopped (2).

109. There is evidence showing that the flight of Greek Cypriots from the fighting area started in the very first days of the Turkish military action in July 1974. A UN report of 22 July 1974 stated that a major problem faced by all UN contingents was that of refugees, most of whom were concentrated in the Kyrenia and Famagusta areas (3). Witness Soulioti also said with regard to displaced persons in the first phase that there may have been some who fled, who left on their own (4).

110. The evidence shows, however, that the main refugee movement occurred during the second phase of the Turkish military action. Witnesses Odysseos and Kaniklides both considered that at the beginning of that phase the people left in panic because they were horrified by the impressions of the July events and the stories told by the refugees from the Kyrenia area about the conduct of Turkish troops towards Greek Cypriot civilians (5).

Mr Odysseos told the Delegation that he himself left Morphou on 14 August 1974 when it became known that the Turkish troops approached the area; by the time they moved into Morphou on 16 August all but 600 Greek Cypriots (of more than 6,000) had gone (6).

Mr Kaniklides stated that he had stayed in Famagusta because he had been living with his paralysed mother, but at least 95 if not 99% of the Famagusta population left when they became aware that the (second) Geneva negotiations had broken down, as "no sane family would stay in Famagusta under the circumstances" (7).

111. Witness Iacovou stated that the village Akhna (Athna) was occupied by the Turkish army after the cease-fire of 16 August 1974; only three persons stayed behind in that village. On the other hand the local population and many refugees remained at Akheritou until the Turkish troops arrived. This village borders on the sovereign base area of Dhekelia Ayios Nikolaos and had therefore been thought to be secure - wrongly as it turned out. The village was attacked and some people were killed (8).

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(1) Verbatim Record, pp. 167 and 174.
(2) Cf para. 104 above and Verbatim Record p. 165.
(3) UN Doc. S/11353/Add. 2, para. 13.
(4) Verbatim Record, p. 5
(5) Verbatim Record, pp. 90 and 180. See also Chapters 3 and 4 below.
(6) Verbatim Record, pp. 89-90. A UN report of 15 August 1974 (S/11353/Add. 27 para. 4) states that Morphou was evacuated "by the National Guard and civilians".
(7) Verbatim Record, p. 180.
(8) Verbatim Record, pp. 173-174.

112. The following witnesses told the Commission's Delegation that they themselves had left, or had seen others leaving, their homes in the northern part of Cyprus because of the Turkish military operation, without direct physical constraint being exerted against them:

(a) Witnesses Mr Efthymiou and Mrs Kyprianou described how they and their families, like many other people, left their homes near Kyrenia in order to get away from the area of fighting as soon as they noticed the arrival of the Turkish forces in the first phase of the military operation (20-21 July 1974); they were, however, eventually apprehended by the Turkish soldiers (1).

(b) Witness Dr Charalambides, former Deputy Mayor of Kyrenia, stated that immediately after the first period of fighting many people including himself (on 23 July 1974) left their houses in Kyrenia because they did not feel secure any longer,and sought refuge in the Dome Hotel which at that time was under UN protection (2).

(c) Witness Odysseos stated that he left Morphou on 14 August 1974 before the Turkish army reached it (3).

(d) Witness Kaniklides from Famagusta (4) stated that he saw members of his family leaving (5) and that he had telephone communications with clients who had left Famagusta (6) before the Turkish troops moved into the city.

(e) Witness Dr Hadjikakou, a physician, stated that he was in charge of a military hospital at Lysi. After an air attack he moved all his patients from Lysi to Famagusta. He was then ordered (apparently by the applicant Government) to stay in Famagusta and to work in the Government hospital there, which in turn was eventually evacuated to the enclave Ormidhia in the British base of Dhekelia (7).

113. Of the persons interviewed in the refugee camps refugee B said that she and her family left the village Trakhoni before Turkish troops reached it, and that she saw others leaving as well (8). Refugee D of Palekythro, who was detained in Voni, said that the other members of his family crossed over to the Greek sector in view of the danger (9). Three young boys in the refugee camp Stavros (H, I and J, aged between 11 and 14 years) stated that they left their homes with their families (10).

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(1) Cf Verbatim Record, pp. 197-198 and 204-205; see also statements I, Nos. 59, 60 and 82 which refer to the same incidents.
(2) Verbatim Record, p. 73.
(3) See para. 110 above.
(4) See para. 110 above.
(5) Verbatim Record, pp. 181-182.
(6) Ibid. p. 184.
(7) Verbatim Record, pp. 105-106.
(8) Addendum : pp. 4-5.
(9) Addendum : p. 9.
(10) Addendum : pp. 13-14 .

114. It appears from the evidence that the refugee movement of Greek Cypriots from any place in the northern area of Cyprus came to a halt as soon as it was overtaken by the Turkish troops. After the phases of actual fighting (20-22 July and 14-16 August 1974) any Greek Cypriots who still remained in areas then controlled by the Turkish army were subjected to restrictions of movement (1) and it seems that the Turkish forces even stopped the flight of Greek Cypriot refugees. Several written statements (2) described the apprehension by Turkish troops of such refugees in their flight.

III. Measures of displacement not directly connected with the Turkish military action in the periods of actual fighting

115. There is evidence that after the end of the actual fighting any displacement of Greek Cypriots within and from the areas controlled by the Turkish army took place under the actual supervision of the civil or military authorities in these areas.

116. The Commission found evidence concerning the following forms of such displacement:

(a) displacement of Greek Cypriots within the areas controlled by the Turkish army, in particular by their eviction from homes and property (3);

(b) expulsion of Greek Cypriots from the north of Cyprus across the demarcation line (4);

(c) negotiated transfer of Greek Cypriots to the area controlled by the applicant Government after detention in the north of Cyprus (5);

(d) deportation of Greek Cypriots to the mainland of Turkey from where they were eventually released to the area controlled by the applicant Government (6), and

(e) negotiated transfer, for humanitarian reasons, of medical cases and other persons to the area controlled by the applicant Government (7).

(a) Displacement of Greek Cypriots within the areas controlled by the Turkish army

117. There is ample evidence concerning the removal of large groups of Greek Cypriots from places in the north of Cyprus to

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(1) As regards the restrictions imposed on so-called enclaved persons, see Chapter 2 A below.
(2) Cf e.g. Statements I, Nos 2, 46, 52, 58, 70, 81, 83, 90.
(3) See paras. 117-122 below.
(4) See paras. 123-130 below.
(5) See paras. 131-149 below.
(6) See paras. 150-158 below.
(7) See paras. 159-165 below.

other places within the territory controlled by the Turkish army. It appears that a considerable number of people, including in many instances the entire remaining population of Greek Cypriot villages, were so removed from their ordinary places of residence, but a relatively high proportion were persons who had left their own homes and found shelter in the houses of others, relatives, friends and in some cases foreigners.

118. There is evidence that persons were evicted under physical constraint from houses, including their own houses. Thus, Refugee A in the Refugee Camp Orphanage School stated that she and her family were evicted from their house at Ayios Georgios in July 1974 (1). Witnesses Kyprianou and V. Ephtimiou stated that their group was forced out at gun point from a cellar or stable where they had hidden (2). Witness Andronikou, Director General of the Cyprus Tourism Organisation, stated that two hotel owners who had been ejected came to see him: The owner of the Constantia Hotel in Famagusta, who had stayed behind after the evacuation of the city because he had had a bed-ridden daughter, had been asked by the Turkish military authorities to go away, otherwise he would suffer the consequences. A lady, the owner of the Bellapais Hotel in Kyrenia, had been ordered to leave the hotel and had been threatened that she would be killed if she refused to go (3). Moreover, it appears that many people were ordered to gather at certain central assembly points (school, church) in their respective villages (4). If they were not immediately detained there (5) they were driven away in buses and other vehicles.

119. Especially in respect of the first phase of the Turkish military action there is evidence that groups of people were driven to assembly points outside villages, where they were held for short periods of time, and then allowed to return to their villages. Forcible excursions of this kind were in some places repeated several times, and in some cases the villagers found their houses looted when they returned. Eventually the men were taken prisoner, and women and children were expelled to areas controlled by the applicant Government.

120. Incidents of this kind were confirmed in a UN report of 5 August 1974 (6). The Delegates also heard some eye-witnesses who described such incidents.

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(1) Addendum, pp. 1-12.
(2) Verbatim Record, pp. 198, 205.
(3) Verbatim Record, pp. 126-127.
(4) Cf e.g. the statement of witness Pirkettis, Verbatim Record, p. 42 and Statements I Nos 1, 3, 12, 13, 14, 29, 32, 41, 49, 50, 53, 68.
(5) Cf e.g. Statements I Nos 3, 21, 33, 36, 47, 49 and 51.
(6) UN Doc. S/11353/Add. 15 para. 8 a).

Thus witness Pirkettis, a 37 year-old schoolteacher, stated that he was on holiday in the north and stayed in a house at Trimithi when the Turks arrived. On 26 and 29 July 1974 the people in this village were told to gather in the school yard and were then driven in buses and trucks to Boghazi. Having been brought back to their village, they were again driven to Boghazi, but this time all men between 15 and 70 including himself were separated from their families at Boghazi and brought to Turkey (1). His family was again taken back to the village and was released to the south some days later (2).

Refugee C in the Refugee Camp Orphanage School in Nicosia stated that she and other persons who had taken refuge in a house of English people in the village of Karmi were evicted and taken to a field. About 200 people were kept there for several hours, and were then driven to Boghazi on the Kyrenia-Nicosia road, from where they were taken back to the village. The men, including C's son, were then taken prisoner, and she herself and other villagers were expelled after several days of confinement (3).

Descriptions of similar incidents were contained in a number of written statements submitted by the applicant Government some of which referred to and confirmed the above statements concerning events in Trimithi and Karmi (4).

121. It further appears from the evidence that in other cases groups of Greek Cypriots were transported, either directly from their villages, or from the assembly points mentioned above, to various places of detention within the territory controlled by the Turkish army:

(a) Men who were later officially classified as "prisoners or detainees" in the inter-communal agreements and UN documents, were usually taken to Saray Prison or Pavlides Garage in the Turkish sector of Nicosia, or to Turkish military camps in the countryside (e.g. Acrades camp). Most of them were subsequently deported to Turkey (5).

(b) Many people, mostly women, children and old men, were taken to certain detention centres, the main ones being in Gypsou, Marathovouno, Vitsada, Voni and later Morphou (6). Witness Soulioti submitted lists giving details of such transfers (7).

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(1) Verbatim Record, pp. 41-44.
(2) Ibid., p. 57.
(3) Addendum, pp. 6-8.
(4) Statements I, Nos 3, 4, 68, 92 (Trimithi) and 69 (Karmi).
(5) See Chapter 2 C below.
(6) See Chapter 2 B below.
(7) Addendum pp. 22-23.

(c) Finally, some persons from Kyrenia and the surrounding villages were brought to the Dome Hotel at Kyrenia by Turkish troops. This was confirmed by UN reports (1) and by witnesses heard by the Delegation, including witness Soulioti (2) and eye-witness Dr. Charalambides, who was detained in the Dome Hotel (3). Other persons who went to the Dome Hotel or who were brought there by the UN forces for their protection were eventually also detained by the Turkish army and not allowed to return to their houses (4).

122. By the summer of 1975 the process of displacement of Greek Cypriots within the north of Cyprus had come to an end either by the return of the persons concerned to their homes in this area, or by their expulsion or negotiated transfer the area controlled by the applicant Government.

(b) Expulsion of Greek Cypriots from the north of Cyprus across the demarcation line (5)

123.. Expulsions of groups of Greek Cypriots from the area controlled by the Turkish army by their deportation to the demarcation line were described in a UN report based on UNFICYP information of 5 August 1974. According to this report some of the women and children of many villages were told to leave their villages and to cross the line into territory controlled by the National Guard. Others were transported, without their possessions, to Nicosia by bus and set free with instructions to cross the "green line" into the Greek Cypriot sector of the city (6).

124. Straightforward expulsions by driving groups of people in buses and other vehicles to the green line were also described by witness Mrs Soulioti who stated (7) that she had personally seen such people arrive and had arranged that they were put in the Acropolis Gymnasium in Nicosia where she had interviewed some of them. As President of the Cyprus Red Cross Society she had also received various reports from Red Cross workers who had taken care of those displaced persons at the green line.

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(1) UN Doc. S/11353/Add. 15, para. 18 a).
(2) Verbatim Record, p. 7. According to this witness "a few people .... were sort of mopped up from the villages west of Kyrenia in the first phase and put in the Dome Hotel".
(3) Verbatim Record, p. 73.
(4) Cf. Chapter 2 B below.
(5) The term "demarcation line" designates the dividing line between the territories controlled at the material time by the applicant Government on the one hand and the Turkish forces on the other - cf para. 14 above.
(6) UN Doc. S/11353/Add. 15, para. 8 b.
(7) Verbatim Record, pp. 3-6.

According to the witness there had been three waves of such expulsions:

- On 2 August 1974 about 600 people were evicted in this way from Trimithi, Karmi and Ayios Georgios, three villages just west of Kyrenia.

- According to statements made to the Cyprus Red Cross between 17 and 24 August 1974 the same pattern was followed in the second phase of the Turkish military operation with regard to the villages of Omorphita, Trakhoni, Mandres, Assia and Livadia. Mrs Soulioti could not tell the overall number of actual expulsions in the second phase but stated that she had received information according to which 300 people of Assia had been evacuated to Dhekelia.

- Finally, according to the witness, 900 people, mainly from the Karpasia area, were expelled in June 1975; she was informed of this expulsion by the Red Cross workers who received these people. The witness also submitted a copy of a letter written on 8 July 1975 by Mr Matsoukaris, Head of the applicant Government's Service for Humanitarian Matters, to Mr H. Schmid de Gruneck, Head of the Mission of the International Committee of the Red Cross in Nicosia, which described the conditions under which these expulsions occurred (1).

125. Hearsay evidence concerning direct expulsions from Trimithi and Asha (Assia) was given by witness Iacovou. He stated that the people of Asha were loaded into buses and taken to the village of Pergamos, which borders on the Sovereign Base of Dhekelia, where they were released and told to walk to the other side (2). As to the expulsions from the Karpasia area, he observed (3):

> "The Turks (Turkish Cypriots) have been going to the area controlled by the Turkish army all the time by various means. The official means was originally the exchange of prisoners and then the reunification of families. That was done by agreement. The recent exchange which was agreed upon in Vienna arose from the intention of the Turks to expel 10,000 persons in the Karpas peninsula unless the Turks in the south were allowed to go north. In fact they had started enforcing their threat and expelled 850 Greeks from the Karpasia area, and in the course of the Vienna talks it was agreed that the Government should allow the Turks in the Government-controlled area to go north and the Turkish authorities would accept a number of the 850."

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(1) Addendum, pp. 17-19.
(2) Verbatim Record, p. 167.
(3) Ibid., p. 165.

126. The Commission's Delegation also heard several persons who stated that they were expelled from the north of Cyprus, or had been eye-witnesses of such expulsion.

Among the refugees whom Delegates interviewed in the refugee camp Orphanage School in Nicosia one person, Refugee A, stated that she was forced by Turkish Cypriots to leave her house at Ayios Georgios. She was eventually driven to the green line in Nicosia on 2 August 1974. All the people in the camp had come to the green line together. (1).

Another woman in the same camp, Refugee C from Karmi, described the eviction of the population of her village: when Turkish troops arrived in July 1974 they drove about 200 villagers in vehicles to a place on the Kyrenia-Nicosia road. The UN intervened and they were taken back to their villages. Then the men (among them C's son) were separated and deported to Turkey. The remaining people were confined to their houses for several days. Finally, on 2 August 1974 they were taken in trucks to Nicosia where they were set free near the green line at the Ledra Palace Hotel (2).

Witness Pirkettis described a similar course of events in Trimithi (3): he was deported to Turkey (4), but his family was "released" to the south some days after his separation from them on 29 July 1974 (5).

127. Descriptions of group expulsions are also contained in a number of written statements submitted by the applicant Government. According to some statements their authors were evicted from their houses (6) while other statements report that their authors were apprehended in the houses of others or in their flight.(7).

128. Several of these statements relate to the events at Trimithi which were also described by witness Pirkettis. On the whole they confirm his testimony and add that the remaining population of Trimithi was taken to the green line in three buses on 2 August 1974 (8). Two other written declarations stated to be by persons from Ayios Georgios and Karmi support the oral statements of Refugees A and C (9).

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(1) Addendum, pp. 1-3.
(2) Addendum. pp. 6-8.
(3) See para. 120 above.
(4) See para. 298 below.
(5) Verbatim Record, p. 57.
(6) Statements I, Nos 11 (Famagusta), 57 (Mia Milia), 68 (Trimithi), 69 (Karmi) and 70 (Palekythro).
(7) Cf e.g. Statements I, Nos. 4, 46, 63 and 90.
(8) Statements I. Nos 3, 4, 68 and 92.
(9) Statements I, Nos 13 and 69.

129. Further statements concerning expulsions were submitted by witness Tryfon, the Chairman of the Cyprus Land and Property Owners' Association. Of the statements which, according to the witness, were made to his association, one described the forcible expulsion of 184 persons from a village on 7 August 1974 (1). Another written statement submitted by Mr. Tryfon describes a group expulsion of about 60 people on 27 November 1974 (2).

130. Finally, a film of the Cyprus Broadcasting Corporation showing interviews with people from Davlos and other villages of north-east Cyprus, who stated that they were expelled from their homes in June 1975, was shown to the Commission's Delegation at the Cyprus Broadcasting Studios in Nicosia on 4 September 1974 (3).

(c) Negotiated transfer of Greek Cypriots to the area controlled by the applicant Government after detention in the north of Cyprus

131. There is evidence concerning the transfer of a considerable number of Greek Cypriots to the area controlled by the applicant Government on release from detention (4).

132. In connection with detention in the north of Cyprus, the Commission notes that several witnesses considered that in particular the "concentration camps' were a deliberate device to eradicate the Greek population from the area (5).

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(1) Addendum, p. 92.

(2) Addendum, p. 91.

(3) Addendum, p. 99, film No. 3.

(4) For the various forms of detention, see Chapter 2 below; for conditions of detention, see Chapter 4 B below. As regards detention in Turkey, see also sub-section d) below.

(5) Cf. the statements by witness Soulioti, Verbatim Record, p. 9, Stylianou, ibid., p. 36, Hadjiloizou, ibid., p. 70, and Iacovou, ibid., pp. 167 and 174-175. Mr. Iacovou spoke of a "psychological process of making people go" besides the "actual physical process of moving people".

133. In this respect some referred to statements made by Mr Zuger, Representative of the International Committee of the Red Cross (ICRC), and Mr Kelly, Representative of the United Nations High Commissioner for Refugees (UNHCR), before the UN Ambassador Weckmann-Munoz, Mr Denktash and Mr Clerides at their meeting of 7 February 1975 (1).

These statements, which were also submitted by the applicant Government (2), read as follows:

"Zuger:

> The people, who were brought from villages to Morphou, have been placed in a school building, in crowded conditions, under guard. They have no freedom to go outside the school building, they are mostly elderly men and women and young children. The situation is similar to that which existed in Veni, Gypsou and Vitsadha. They want to go south because they are not allowed to go back to their homes. We have not noticed any signs of physical pressure on them, but it is true that, after six months of confinement, they feel that there is no hope for them. Even the Morphou people are not allowed to live in their homes, with the exception of one family. Our doctors fear for the life of these people. Most of them have given up, they are lying on the floor, they are completely disinterested in everything that goes on around them and the only thing they do is to cry. The Red Cross gives them what aid it can in medicines etc., but this is not enough. On humanitarian grounds we urge that they should be transferred to the south.

Kelly:

> One must distinguish their present situation during the last two months from that they were in when they lived in their own villages. Before they were moved from the villages they did not want to go south. They wanted to remain in their homes. Now that they have been moved to Morphou, the physical conditions in which they live are deplorable, they are confined in a school building, they are not allowed to move out of the building, their spirit has broken down. They are lying in the floor crying. As far as we know, they were moved by the Turkish army without any explanation. They were not allowed to move their furniture or their personal belongings except a few clothes. I have visited them before and they were happy in their homes, in the villages.

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(1) Cf. witnesses Odysseos, Verbatim Record, p. 91 and Iacovou, ibid., p. 168.

(2) Appendix A to their observations on the admissibility of Application I.

Zuger:

> They have applied to move south after they were moved from their villages. Before, from our visits to their villages, we can say that they were happy in their homes."

134. In view of these statements the Commission has found it necessary to consider the conditions of the release and transfer of Greek Cypriots from the various places of detention in the north of Cyprus to the area controlled by the applicant Government.

135. There is evidence that the transfer of persons who had been detained for longer periods - as opposed to those who were unilaterally expelled after short periods of detention (1) - took place on a mutual basis under intercommunal agreements which were concluded pursuant to the Geneva Declaration of the Foreign Ministers of Greece, Turkey and the United Kingdom of 30 July 1974 (2). Para 3 D of this Declaration (3) read as follows:

> "Military personnel and civilians detained as a result of the recent hostilities shall be either exchanged or released under the supervision of the International Committee of the Red Cross within the shortest possible time."

135. On 4 August 1974 the Turkish Embassy in Nicosia passed the following message to UNFICYP with the request that it be transmitted to the Greek Cypriot authorities:

> "With reference to paragraph 3 (d) of the Geneva Declaration, Turkey states her readiness to release all civilian Greek and Greek Cypriots who are in the Turkish controlled areas without regard to equality of numbers.
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> Turkey seeks a similar statement from the other interested parties and the ICRC should undertake its responsibilities and fulfil its duty in that respect and state its readiness to co-operate. Turkey gives priority to the release of civilians and as soon as the release of civilians is accomplished the exchange of prisoners should take place." (4)

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(1) See sub-section b) above.
(2) See Part I, para. 13.
(3) Reproduced at Appendix IV.
(4) UN Doc. S/11353/Add. 15, para. 11.

137. The intercommunal talks were then initiated following the UN Secretary-General's visit to Cyprus from 25 to 27 August 1974 (1). They took place between Acting President Clerides and Vice-President Denktash with the assistance of the Special Representative of the UN Secretary-General, Ambassador Weckmann-Munoz, and other UN officials, including a representative of the UN High Commissioner for Refugees, and in the presence of a representative of the ICRC (2).

138. A first preliminary agreement was reached on 6 September 1974 to set up immediately a scheme for the general release of prisoners and detainees, and to give urgent priority in the scheme to the release of sick and wounded prisoners and detainees, and to prisoners and detainees under 18 and over 50 years of age (3).

139. An agreement of 11 September 1974 provided for the release of certain special categories of prisoners and detainees, including persons under 18, students, teachers and sick and wounded prisoners and detainees (4). At a further meeting on 13 September 1974 first priority was given to the exchange of sick and wounded prisoners and detainees, and the categories of persons to be released were extended to old people (from 55), religious, medical and paramedical personnel (5). The first exchange of sick and wounded prisoners pursuant to the above agreements was arranged by the ICRC with the assistance of UNFICYP and medical and aid organisations of both communities at the Ledra Palace Hotel in Nicosia on 16 September 1974. 116 Greek Cypriots and 126 Turkish Cypriots who were brought to the Hotel in buses were exchanged (6). The exchange of sick and wounded prisoners and detainees was completed on 21 September 1974, when 111 Turkish Cypriots and 42 Greek Cypriots were released (7).

140. The ICRC scheme for the release of all remaining prisoners and detainees was adopted in the intercommunal meeting on 20 September 1974 following the completion by the parties concerned of the lists of prisoners and detainees (8). It was put into operation as from 23 September (9) and, after

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(1) Cf. UN Docs. S/11468 and S/11568, paras. 62-63.
(2) UN Doc. S/11568, para. 64.
(3) UN Doc. S/11353/Add. 15, para. 11.
(4) UN Doc. S/11468/Add. 2, para. 17.
(5) Ibid., para 19.
(6) Ibid. para. 20.
(7) UN Doc. S/11468/Add. 3, para. 15.
(8) UN Doc. S/11468/Add. 3, para. 14 b; see also S/11468/Add. 2, para. 20 for the delay caused by the failure to produce the lists of prisoners as agreed on 6 September.
(9) UN Doc. S/11468/Add. 3, para. 15.

a temporary interruption connected with the transfer of prisoners from Turkey (1), it was completed on 31 October 1974. According to a UN report of 6 December 1974 (2) a total of 5,816 prisoners was released on both sides under this programme. They were composed as follows:

Greek Cypriots	2,487	Turkish Cypriots	3,308
Greek nationals	9	Turkish nationals	12

141. It appears, however, that persons in detention centres were not classified as prisoners or detainees, and that the above figure of 2,487 Greek Cypriot prisoners and detainees related primarily to persons who were released after their deportation to Turkey. In fact, the majority of them seem to have been deported persons, and only a small portion were persons who had been held in Saray Prison or at Pavlides Garage in Nicosia.

142. Witness Soulioti stated that these were the two places where prisoners-of-war were detained by the Turkish side in Cyprus (3). She spoke of a total of 2,526 Greek Cypriot prisoners-of-war who were released, of whom 2,380 had been taken to Turkey (4).

143. When the intercommunal talks were resumed under the auspices of the UN Secretary-General in Vienna late in April 1975, both sides declared that they were not knowingly holding undeclared prisoners-of-war or other detainees (5). This affirmation was repeated at the third round of the Vienna talks in August 1975 (6). But these declarations, too, did apparently not refer to the persons held in detention centres in the north of Cyprus.

144. The transfer of persons from the detention centres in the north of Cyprus took place under special agreements reached on the intercommunal level in November 1974. Thus it was agreed on 11 November that about 1,500 Greek Cypriots "located" at Voni and Gypsou would be evacuated to the south. According to a UN report the evacuation of 389 Greek Cypriots from Voni was completed on 18 November 1974. The evacuation of those at Gypsou was completed on 30 November, a total of 1,123 were moved to the south, and at the same time some 250 Turkish Cypriots from Mandres were transferred to the north of Cyprus (7).

145. Witness Soulioti said with regard to the evacuation of detention centres in November 1974:

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(1) See para.154 below.
(2) UN Doc. S/11568, para. 51.
(3) Verbatim Record, p. 18.
(4) Ibid., pp. 23-24.
(5) UN Doc. S/11684, Annex.
(6) Press communiqué of 2 August 1975, UN Doc. S/11789, Annex, p. 2.
(7) UN Doc. S/11568, para. 47.

> "The total number of people, in these camps, was 2,440 about, and they were evacuated between 15 November and 29 November 1975." (1)

Asked where they were evacuated to, the witness replied:

> "They were brought over by the International Red Cross after an agreement between Mr Clerides and Mr Denktash. They were brought into the Greek side and they were all delivered to the Cyprus Red Cross" (of which the witness is the President) (2).

146. Finally it appears from the Progress Report on the UN Operation in Cyprus covering the period 7 December 1974 to 9 June 1975 that of 250 Greek Cypriots who had been concentrated in Morphou from surrounding villages all but 21 were evacuated to the south (3).

147. Most of the oral and written statements of persons who were detained in detention centres do not describe the circumstances of their transfer to the south of Cyprus. There appears to have been, however, a general feeling of relief that they were at last allowed to leave.

148. As regards the transfer to the south of Cyprus of persons confined to the Dome Hotel at Kyrenia (4), the Commission has found no evidence of specific intercommunal arrangements. While these persons were still under UN protective custody unsuccessful attempts were undertaken by the UN to obtain permission for them to return to their homes (5). The UN was more successful in the village of Bellapais where out of about 2,000 Greek Cypriots under UN protective custody 100 were allowed to go to their houses and to move freely (6). With regard to the Dome Hotel it was eventually reported that during the period 7 December 1974 to 9 June 1975 only 53 out of 350 persons who had been confined there remained. Of the 287 persons who left seven were permitted by the Turkish Cypriot authorities to return to their homes in Kyrenia (7), while the remainder were apparently gradually released to the south of Cyprus.

149. Witness Charalambides, a physician and former Deputy Mayor of Kyrenia who had been in the Dome Hotel since July 1974, stated that he was "deported" from the Dome Hotel on 5 April 1975 after protesting to the Turkish authorities that he had been refused permission to go and see a patient on 21 March. He was given two days' notice to leave Kyrenia: "The message came through the Red Cross from a letter which Mr Denktash wrote to Mr Clerides, that if I did not leave in two days' time I would be jailed and interrogated" (8).

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(1) Verbatim Record, p. 10.
(2) Ibid.
(3) UN Doc. S/11717, para. 40.
(4) See Chapter 2, paras. 266-273 below.
(5) UN Doc. S/11353/Add. 10, para. 6.
(6) UN Doc. S/11353/Add. 16, para. 8.
(7) UN Doc. S/11717, para. 40.
(8) Verbatim Record, pp. 73-74.

(d) The deportation of Greek Cypriots to the mainland of Turkey and their eventual release to the area controlled by the applicant Government

150. As stated below (1) about 2,000 Greek Cypriot men were deported to and subsequently detained in Turkey. The applicant Government speak of their "forced expatriation" (2). It is not clear, however, to what extent these persons' displacement from their homes continued after their return to Cyprus and, more particularly, after their release to the area controlled by the applicant Government. A certain portion at least were soldiers of the National Guard and it may be assumed that some of them were residents of the area still controlled by the applicant Government, to which they returned. Some of the civilians who were deported may equally have been residents of that area. In fact, witness Pirkettis stated that he had only been in the north on holiday when he was taken prisoner (3).

151. On the other hand it appears from a number of oral and written statements that soldiers of the National Guard and other persons who were deported were arrested in their homes, or after the eviction from their homes in the north of Cyprus. In this respect the Commission refers to evidence mentioned above (4).

152. The arrangements for the release of persons who had been deported to Turkey were apparently included in the general arrangements for the exchange of special categories of prisoners and detainees, and for the release of all remaining prisoners and detainees under an ICRC scheme. The UN documents available on this matter do not distinguish between persons deported to Turkey and other prisoners and detainees. In fact, the majority of Greek Cypriot prisoners and detainees who were released on the basis of the Geneva Declaration of 30 July 1974 and the pursuant intercommunal agreements concerning "prisoners and detainees" seem to have been persons who had been deported to Turkey (5).

153. Thus it was specially mentioned in a UN document of 18 September 1974 that the second exchange pursuant to the intercommunal agreement of 13 September 1974 awaited the return of sick and wounded Greek Cypriot prisoners from Turkey (6).

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(1) See Chapter 2 C.
(2) Particulars I, para. 20 I; Particulars II, para. 12 k.
(3) Verbatim Record, p. 41.
(4) See para. 121 above.
(5) See para. 141 above.
(6) UN Doc. S/11468/Add. 2, para. 23.

154. According to a UN report of 3 October 1974 (1) the general release of prisoners and detainees was temporarily suspended on 25 September 1974 for two reasons: the remaining Greek-Cypriot prisoners had not as yet returned from Turkey, and some 164 Greek Cypriot detainees who had opted to return to their homes in areas under Turkish control had not been permitted to do so by the Turkish forces and were being held in the Turkish Cypriot quarter of Nicosia (2).

These difficulties were, however, overcome at the inter-communal meeting of 30 September 1974. The agreement reached at this meeting states i.a.

"a) ... Arrangements are in hand for the return of Greek Cypriot prisoners and detainees from Turkey.

b) Stranded Greek Cypriots whose normal residence is in Greek Cypriot areas shall be given facilities to return to their homes. The same applies to Turkish Cypriots ..." (3).

155. Pursuant to these agreements, 106 Greek Cypriot prisoners and detainees were returned to their villages in Karpasia on 2 October, 35 returned to the village of Bellapais and 4 to Morphou on 3 October - all under Turkish control. Nineteen opted to come to the south, and they were handed over to the Greek Cypriot authorities through ICRC on 3 October at Ledra Palace (4).

According to the UN Secretary-General's progress report of 6 December 1974 on the United Nations Operation in Cyprus there were altogether 533 Greek Cypriot prisoners and detainees who went to their villages in the north (i.e. approximately 20% of the 2,487 who were released) (5).

156. It is not clear whether the Greek Cypriot prisoners who were allowed to return to their homes in the north of Cyprus had all been detained in Turkey. The Commission notes, however, that the applicant Government referred exclusively to "ex-prisoners detained in Turkey and now residing in the Turkish occupied areas" as being under a duty to report to the

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(1) UN Doc. S/11468/Add. 3, para. 15.
(2) Cf also the ICRC press release of 25 September 1974 submitted by witness Soulioti, Addendum, p. 24.
(3) UN Doc. S/1168/Add. 3, para. 16.
(4) Ibid., para. 17.
(5) UN Doc. S/11568, para. 51. The corresponding figure of Turkish Cypriot prisoners and detainees who stayed in the south after their release by the applicant Government is 84, i.e. approximately 4% out of the total of 3.308 Turkish Cypriots who were released.

local police twice a day (1).

157. In addition to the documentary evidence in publications of the United Nations the Commission also obtained some direct evidence on the release of prisoners from Turkey. Thus it appears from the statement of witness Pirkettis that the prisoners were not asked or told beforehand where they were going to be released. They were just brought back to Cyprus and set free at the Ledra Palace Hotel (2).

158. At the Cyprus Broadcasting studios in Nicosia the Commission's Delegation saw two films of the Cyprus Broadcasting Corporation showing the arrival of released prisoners of war, to which Mr. Pirkettis had previously referred (3).

(e) Negotiated transfer, for humanitarian reasons, of medical cases and other persons to the area controlled by the applicant Government

159. In addition to the transfer, en bloc, of certain groups of Greek Cypriot prisoners and detainees as described above(4), a number of individuals were brought to the area controlled by the applicant Government for humanitarian reasons. They were usually transferred with the assistance of either the ICRC or UNFICYP, on the basis of general or special arrangements.

160. In particular, an intercommunal agreement reached on 30 September 1974 provided for facilities to be given to persons in need of medical treatment, including expectant mothers, to go to their respective sides to be treated in hospitals or clinics or by doctors there (5).

161. The task of the sub-committee on humanitarian matters set up pursuant to a decision by MM. Clerides and Denktash of 17 January 1975 included the transfer to the south and north, respectively, of stranded Greek Cypriot and Turkish Cypriot children (6).

162. Apart from these general measures some cases were apparently discussed individually at the intercommunal talks, especially in private meetings between MM. Clerides and Denktash at the

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(1) Particulars II, at pp. 10-11.
(2) Verbatim Record, pp. 51-62.
(3) Addendum, p. 99, films Nos. 2 and 7.
(4) See sub sections(c) and (d) above.
(5) UN Doc. S/11468/Add. 3, para. 16 c.
(6) Cf. UN Doc. S/11717, para. 47.

end of each session. Thus witness Soulioti mentioned that a 16 year-old boy who had survived a mass killing was transferred on 7 June 1975 on the intervention of Mr. Clerides (1). Witness Stylianou stated that he had drawn Mr. Clerides' attention to the necessity of the transfer of certain girls who had been raped (2).

163. The actual transfer was carried out in each case with the assistance of the ICRC or the UN. Thus a UN report of 6 December 1974 mentioned that UNCIVPOL (3) had assisted to a considerable extent in the humanitarian relief programme, i.a. by providing escorts for the evacuation of persons on medical or other grounds (4). A further UN report covering the period up to 9 June 1975 stated that UNFICYP medical officers examined cases being considered for evacuation (5).

164. The accounts of individual cases given by witnesses before the Commission's Delegation show that often considerable obstacles had to be overcome until the transfer could eventually be arranged.

Thus, in the case reported by witness Soulioti of a 16 year-old boy who was eventually transferred on the intervention of Mr. Clerides, there was a previous attempt of the UN High Commissioner of Refugees, Prince Saddrudin Aga Khan, to take him with him when he visited the north of Cyprus on 23 August 1974. But a Turkish officer intervened and took the boy out of the High Commissioner's car. According to the witness, this incident was filmed and shown on TV (6).

Witness Dr. Charalambides, the former Deputy Mayor of Kyrenia who had continued to practise medicine while being confined to the Dome Hotel at Kyrenia, spoke of the transfer of emergency cases to the Government-controlled areas which he had managed to arrange with the assistance of the Red Cross, although he had encountered great difficulties in some cases (8).

Another witness, Dr. Hadjikakou, reported the case of one of his patients who, after several months of detention, was handed over to Mr Clerides at Mr Denktash's office on 7 August 1975 (9).

Witness Kaniklides stated that the UN had transferred himself and his paralysed mother from the old city of Famagusta to the Government-controlled area after they had been informed by his relatives. Considerable time passed until they finally got the permission to leave (9). ./.

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(1) Verbatim Record, p. 20.
(2) Verbatim Record, pp. 29 and 34.
(3) The civilian police element of UNFICYP.
(4) UN Doc. S/11560, para. 57.
(5) UN Doc. S/11717, para. 40.
(6) Verbatim Record, pp. 20-21
(7) Verbatim Record, p. 76.
(8) Verbatim Record, p. 111.
(9) Verbatim Record, pp. 193-195.

165. At the third round of the Vienna talks it was generally agreed on the intercommunal level that the Greek Cypriots then in the north of the island were free to stay, but would be permitted to move to the south at their own request and without having been subjected to any kind of pressure (1).

An interim report of the UN Secretary-General of 13 September 1975 stated that 149 Greek Cypriots had been permitted to move to the south on that basis (2).

IV. The refusal to allow the return of displaced persons

166. As mentioned above (3), a number of Greek Cypriots were allowed to return to their homes in the north of Cyprus on their release from various places of detention. In particular, the UN reported that about 20% of the "prisoners and detainees" were allowed to return to the north of Cyprus under the provisions of an intercommunal agreement of 30 September 1974. Moreover, some of the persons confined to the Kyrenia Dome Hotel were eventually allowed to return to their homes in the northern area.

167. As regards persons displaced to the area controlled by the applicant Government, either by their flight, or by their expulsion or negotiated transfer from the north of Cyprus, the evidence shows that not more than 1,000 of them were allowed to return to their homes in the north. They belonged to specific categories of persons (e.g. priests and teachers) who were treated as exceptional cases(4).

168. The displaced persons in the south were physically prevented from returning to the northern area as a result of the fact that the demarcation line ("green line" in Nicosia) was sealed off by the Turkish army. Members of the Commission's Delegation have themselves crossed this line at Ledra Palace checkpoint in Nicosia (5) and seen the roadblocks in the other parts of Nicosia. According to UN reports both sides consolidated their defensive positions outside Nicosia by fortifications along the demarcation line and, in particular, extensive minefields (6). The access to areas controlled by the Turkish forces and to villages in the north in which Greek Cypriots remained was restricted even for UNFICYP (7), and the movement of Greek Cypriots in these areas was subjected to general restrictions (8).

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(1) UN Doc. S/11789/Annex, p. 1, paras. 2 and 3.
(2) UN Doc. S/11789/Add. 2, para. 4.
(3) Cf. paras. 148, 155.
(4) See Part I, para. 17, above and para. 178 below.
(5) See Part I, para. 70.
(6) UN Docs. S/11568, paras. 27 30 and S/11717, paras. 18, 19 and 21.
(7) UN Docs. S/11568, paras. 31 33, S/11624, para. 17 and S/11717, paras. 22-23.
(8) See Chapter 2 A below. Reference is also made to the applicant Government's complaint concerning the detention of Greek Cypriots arrested at the demarcation line (cf. para. 88 above).

169. The following examples were given by witnesses of unsuccessful attempts of displaced Greek Cypriots to return to their homes in the north of Cyprus:

- Witness Odysseos stated that during the first phase of the Turkish military operation in July 1974, some refugees at Morphou tried to return to Lapithos, Karavas, Ayios Georgios and Vavylas. They were not allowed to enter those places and thus forced to return to Morphou (1).

- Witness Andronikou stated that the owner of the Famagusta Palace Hotel, of British origin and married to a Greek Cypriot, told him that she made various unsuccessful attempts to go back to see her hotel after having left. She finally managed to visit Famagusta in September 1974 with representatives of embassies whom the Turkish military forces had allowed to go there with an escort (2).

- Witness Kaniklides stated that immediately after the actual fighting in August 1974 quite a number of people tried to return to Famagusta, but all were caught and some deported to Turkey (3).

- Witness Hadjikakou stated that he went back to Turkish occupied Famagusta after the case-fire, on 18 or 19 August 1974, and apparently nothing happened to him then, but he was later prevented from going there again (4).

170. Evidence showing that a large group of displaced Greek Cypriots unsuccessfully asserted their claim to return to their homes in the north of Cyprus is the large demonstration of Greek Cypriot women (supported by non-Cypriot women) which took place, apparently under the motto "Women Walk Home", at Dherinia, south east of Famagusta, on 20 April 1975 (5).

171. As regards proceedings in the United Nations concerning the return of displaced persons to their homes in the north of Cyprus, the General Assembly, in Resolution 3212 (XXIX) of 1 November 1974 (6), considered "that all the refugees should

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(1) Verbatim Record, p. 90.
(2) Ibid., p. 127.
(3) Ibid., p. 187.
(4) Ibid., p. 113.
(5) UN Doc. S/11717, para. 29.
(6) See para. 5 of the Resolution reproduced at Appendix VIII to this Report. The Resolution was adopted by 117 votes against none, with no abstention, Turkey voting for the resolution. The Turkish Foreign Minister, explaining his vote, stated that the refugee problem had both a political and a humanitarian aspect and was closely linked with the political solution of the Cyprus problem. See UN Doc. A/PV.2275 (provisional), at pp. 161 and 162.

return to their homes in safety" and called upon the parties concerned "to undertake urgent measures to that end". The Security Council endorsed this Resolution on 13 December 1974 and requested the Secretary General to report on its implementation (1).

172. On 24 January 1975 the Secretary General asked the parties concerned to provide him with all relevant information concerning steps taken or contemplated by them. However, formal replies were only received from Cyprus and Greece (2). The Greek Government stated that their efforts to press for the implementation of the provision "that all refugees should return to their homes in safety" had been of no avail. In each case the Turkish side had replied that this question was a political one and should be solved within the framework of a political settlement (3).

173. On 13 February 1975 the UN Commission on Human Rights, referring to General Assembly Resolution 3212 (XXIX), also called upon all parties concerned to work towards the full restoration of human rights to the population of Cyprus and to undertake urgent measures for the return of all refugees to their homes in safety (4).

174. On 20 November 1975 the UN General Assembly reiterated its call upon the parties concerned to undertake urgent measures to facilitate the voluntary return of all refugees to their homes in safety, and to settle all other aspects of the refugee problem, and urged all parties to refrain from unilateral actions, in contravention of Resolution 3212, including changes in the demographic structure of Cyprus (5).

Turkey was the only State which voted against this Resolution (6). In the preceding general debate in the plenary of the General Assembly the representative of Turkey stated that troop withdrawal and refugee settlement could not be negotiated out of context; they were part of an overall solution that would have to be arrived at. He also denied the applicant Government's allegation that Turkey was changing the demographic composition of northern Cyprus by importing settlers from the Turkish mainland, and stated that she was only bringing in Turkish Cypriot labourers in order to meet a labour shortage; those workers had originally fled from Cyprus because of persecution (7).

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(1) Cf Security Council Resolution 365 (1974).
(2) Cf UN Doc. S/11624, para. 11 and Annexes F and G.
(3) Ibid., Annex F, para. 2.
(4) Cf. Resolution 4 (XXXI) of the UN Commission on Human Rights (reproduced at Appendix XI to this Report).
(5) Resolution 3395 (XXX), paras. 4 and 6, reproduced at Appendix IX to this Report.
(6) Cf UN Doc. A/PV.2413 (provisional), at p. 73.
(7) Cf UN Monthly Chronicle, Vol. 12, No 11 (December 1975), p.16.

175. On 27 February 1976 the UN Commission on Human Rights, expressing concern about the lack of progress in the implementation of its previous Resolution and the continuing plight of the displaced persons in Cyprus, urging all parties to refrain from unilateral changes in the demographic structure of Cyprus, adopted a Resolution along the same lines as the General Assembly Resolution of 20 November 1975 (1).

176. Apart from the above proceedings in the General Assembly and the Security Council, Turkish action in the United Nations concerning the return of displaced Greek Cypriots to the north of Cyprus included the transmission, for circulation as official UN documents, of relevant statements by representatives of the Turkish Cypriot community. Thus the Turkish Permanent Representative to the United Nations:

- transmitted a protest letter by the President of a Turkish Cypriot women's organisation against the Greek Cypriot women's march of 20 April 1975 (2), stating i.a. that after the denials of human rights suffered by Turkish Cypriots it was absolutely impossible for them to exist intermingled with the Greek Cypriots (3);

- transmitted in May 1975, shortly before the second round of the intercommunal talks in Vienna, a letter from Mr Denktash complaining that the applicant Government continued to use the refugee problem, which in fact existed on both sides, as a political tool against the Turkish side, making the return of the refugees a precondition of any political solution. In view of the political and security implications involved in the return of refugees this could only be regarded as an irresponsible and unrealistic approach (4);

- transmitted in June 1975 a further letter from Mr Denktach stating that the return of refugees was a matter to be settled within the framework of a final solution to the Cyprus problem (5).

177. The views of the Turkish Cypriot authorities on the question of the return of displaced Greek Cypriots to the north of Cyprus - views which are apparently supported by the Turkish Government - have been stated as follows in the proclamation of 13 February 1975 of a Turkish Federated State of Cyprus (6):

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(1) Resolution 4 (XXXII) of the UN Commission on Human Rights reproduced at Appendix XII to this Report.
(2) Mentioned at para. 170.
(3) UN Doc. S/11679.
(4) UN Doc. S/11706.
(5) UN Doc. S/11718.
(6) See Part I, para. 17 of this Report. The text is reproduced in UN Doc. S/11624, Annex B.

"The Council of Ministers and the Legislative Assembly of the Autonomous Turkish Cypriot Administration ....

.....

Have come to the conclusion that there is no possibility of their living together with the Greek Cypriot co-founders of the Republic of Cyprus;

Having come to the conclusion that the only way for bringing tranquillity, security and permanent peace to the island is for the two communities to live side by side in their respective region, developing their own internal structure ...."

178. The issue of the return of Greek Cypriot displaced persons to the north was apparently also included among the subjects of the political talks on the intercommunal level, in particular at the meetings in Vienna.

The communiqué issued at the end of the first round of the Vienna talks mentions that there was a detailed examination of the question of displaced persons and of the geographical aspects of a possible future settlement in Cyprus (1).

After the second round of the Vienna talks, the UN Secretary General observed that the deadlock over the fundamental basis of a settlement persisted, one of the principle difficulties being the difference of opinion on priorities to be given to the different aspects of a future settlement, one side wishing first to establish the powers and functions of the central government, the other wishing first to clarify the territorial aspects which had a vital bearing on the refugee problem (2).

A limited agreement was finally reached at the third round of the Vienna talks (31 July - 2 August 1975). It provided, in connection with an arrangement concerning permission for Turkish Cypriots in the south to go to the north, and for Greek Cypriots in the south to go to the north, and for Greek Cypriots in the north to stay or go to the south if they wanted to do so, that

"priority will be given to the reunification of families, which may also involve the transfer of a number of Greek Cypriots, at present in the south, to the north." (3)

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(1) UN Doc. S/11694, Annex.
(2) UN Doc. S/11717, para. 66.
(3) Press communiqué issued in Vienna on 2 August 1975, UN Doc. S/11789, Annex, point 5. Cf Part I, para. 17, of this Report.

A UN report of 13 September 1975 stated that by then 296 Greek Cypriots had been transferred to the north with UNFICYP assistance under this agreement, and that 14 more including 8 teachers were due to be moved on 16 September 1975 (1).

V. Separation of families brought about by the displacement of Greek Cypriots

179. There is evidence that the displacement of Greek Cypriots from their homes in the north of Cyprus led to the separation of many families.

180. During the refugee movement of Greek Cypriots provoked by the Turkish military action in the two phases of actual fighting in July and August 1974 a number of persons, mainly old people, invalids, women and children, were left behind by their families and became enclaved. This has been confirmed by some witnesses (including witness Kaniklides who stayed with his mother in Famagusta while other members of his family left) (2), persons interviewed in refugee camps (3) and in many written statements submitted by the applicant Government (4). A UN report also mentions this fact (5).

181. There is evidence that the displacement of Greek Cypriots within the north of Cyprus following the phases of actual fighting brought about further separations of families by the transfer of men and their families to different places of detention (6), or by the detention of men and the expulsion of their families across the demarcation line. This is confirmed by the testimony of witness Pirkettis who was a victim of such measures (7). It was also mentioned by other witnesses (8), persons interviewed in refugee camps (9) and in many written statements submitted by the applicant Government (10).

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(1) UN Doc. S/11789/Add. 2, para. 4. Cf also the statement of witness Iacovou mentioned in para. 125 above, and similar statements by witnesses Stylianou, Verbatim Record p. 35, and Odysseos, Verbatim Record p. 101, about the limited scope of this agreement.
(2) Verbatim Record, pp. 180-182.
(3) Addendum, pp. 4, 5, 9.
(4) E.g. Statements I, Nos 2, 11, 12, 15, 28, 29, 62, 63, 72.
(5) UN Doc. S/11353/Add. 15, para. 8 a.
(6) Cf Chapter 2 below, para. 314.
(7) Verbatim Record, p. 44.
(8) E.g. Witness Soulioti, Verbatim Record p. 4; witness Iacovou, ibid. p. 167.
(9) Addendum, pp. 1-3, 7, 13.
(10) E.g. Statements I, Nos 3, 21, 22, 23, 34, 46, 49, 62, 69.

182. The transfer of detained Greek Cypriots to the south of Cyprus under the relevant intercommunal agreements apparently did not cause further separations of families on a large scale. The UN reported that Turkish Cypriot prisoners released under these agreements often opted to go north although their families still remained in Turkish Cypriot enclaves in the south (1), but nothing of the kind was stated with regard to Greek Cypriots, and it appears that the 20% of the Greek Cypriot prisoners and detainees who were eventually allowed to return to their homes in the north, mainly in the Karpasia area, joined their families there, while those who opted to go south also had their families in the south (2). The intercommunal agreements on the release of prisoners therefore seem to have led to the reunification of Greek Cypriot families rather than to their separation.

183. A number of Greek Cypriot families, however, was still separated after the negotiated transfers, and this situation was prolonged by the refusal to allow the return of Greek Cypriots to their homes in the north.

The problem was apparently discussed on the intercommunal level and some partial solutions were gradually reached, e.g. by the programme for the transfer of stranded children on both sides (3). An agreement on the reunification of families was finally concluded at the third round of the Vienna talks in July/August 1975 (4). However, even that agreement had only a limited effect. Some witnesses stated that the persons whom they actually allowed to return were selected by the Turks (5).

184. Witness Iacovou stated that after the agreement there were still separated families. Their number, however, could not be very big with only 10,000 enclaved Greek Cypriots in the north. It also depended on what one considered as a family unit. There was an enlarged family concept in Cyprus, and in his view also a larger family unit would probably suffer as a result of the separation. The witness was prepared to submit statistical material on the number of separated families and the degree of relationship of those separated (6).

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(1) UN Doc. S/11568,para. 47.
(2) Cf the statements of witnesses Odysseos, Verbatim Record p. 101, and Iacovou, ibid. p. 165.
(3) Cf para. 161 above.
(4) Cf para. 178 above.
(5) Cf the statements of witnesses quoted in footnote (1) above.
(6) Verbatim Record, p. 171.

D. Evaluation of the evidence obtained

I. General

185. Since it is common knowledge that the overwhelming majority of the Greek Cypriot population from the northern area has been displaced as a consequence of the Turkish military action in 1974 the Commission does not consider that specific evidence corroborating this is needed. As regards the number of persons affected, the Commission accepts as credible the figures mentioned by witness Iacovou, i.e. about 182,000 displaced Greek Cypriots in September 1975 (1).

II. Movement of persons provoked by the military action of Turkey

186. The Commission considers that the evidence before it shows that the vast majority of displaced Greek Cypriots left the north of Cyprus as a direct consequence of the military action of Turkey.

Many fled during the first phase of this operation from the areas where actual fighting took place, or from areas considered to be in danger of becoming the theatre of military operations. There then developed in the Greek Cypriot population a sentiment of fear and horror about the reported conduct of the Turkish troops - a sentiment convincingly described by witnesses Odysseos and Kaniklides who came from places as far apart as Morphou and Famagusta (2) - and, during the second phase of the military action, whole areas were evacuated by their Greek Cypriot residents before the Turkish army reached them (3).

187. The Commission has not included in its examination those some 20,000 refugees who only temporarily left their homes in the south near the demarcation line (4).

188. The Commission was not able to establish the exact figure of persons who fled. It assumed, however, that they were more than 170,000 since all other categories of displaced persons together make up only a few thousand out of the above-mentioned total of 182,000.

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(1) Cf para. 104 above.
(2) Cf para. 110 above.
(3) Cf paras. 104, 105, 110, 112.
(4) Cf paras. 104, 105.

III. Measures of displacement not directly connected with the Turkish military action in the phases of actual fighting

189. The Commission considers that the evidence before it establishes that a large number of Greek Cypriots who remained in the north of Cyprus after the arrival of the Turkish troops were uprooted from their normal surroundings and temporarily subjected to various measures of displacement.

(a) Eviction from houses and transportation to other places within the north of Cyprus

190. The range of these measures included the eviction of Greek Cypriots from houses including their own houses, the assembling of them at certain places, forcible excursions to other places where they were held for periods ranging from several hours to several days, and their transfer to prisons, detention centres or other detention places.

Such measures were not only described in a considerable number of individual statements, some of them corroborating each other, including statements made orally to the Commission's Delegation in Cyprus. They were also confirmed in reports of the United Nations and of the International Committee of the Red Cross which leave no doubt as to their correctness (1).

(b) Expulsion across the demarcation line

191. The Commission finds it established that there was an organised operation for the expulsion of the remaining civilian population of some villages in the Kyrenia district (Trimithi, Ayios Georgios, Karmi) to the south of Cyprus by driving them in buses to the green line at the Ledra Palace Hotel in Nicosia on 2 August 1974. Several persons gave the Commission's Delegation a detailed description of these events, which were also confirmed in written statements submitted to the Commission. Moreover, witness Soulioti saw the arrival of these expellees and arranged their accommodation, and a UN report based on UNFICYP sources apparently concerns the same events although no places or names are mentioned (2).

192. Taking into account its above finding, the Commission finds strong indications that the other group expulsions mentioned by witness Soulioti (3) also happened in the way described. This concerns, in particular the alleged expulsion of persons from the Karpasia area in June 1975, which was also mentioned by a number of other witnesses. The Commission's

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(1) Cf paras 117-122 above.
(2) Cf paras 123, 124, 126 above.
(3) Para. 124 above.

Delegation saw a film of persons who stated that they were expelled in June 1975, and they were also given a copy of an official letter to the ICRC in Nicosia protesting against these expulsions. However, the Commission has been unable to establish whether applications for transfer to the south were made by a number of these persons and, if so, whether such applications were made voluntarily.

193. With regard to other group expulsions, especially those during the second phase of the Turkish military operation, the Commission disposes only of hearsay evidence.

(c) Negotiated transfer of prisoners and detainees, including those detained in Turkey

194. The fact that several thousand Greek Cypriot prisoners and detainees, including those detained in Turkey, became displaced as a consequence of their transfer and release to the south of Cyprus under the provisions of the Geneva Declaration and various intercommunal agreements is common knowledge (1).

195. The Commission has not fully investigated to which extent these persons had an option to return to their homes in the north of Cyprus. It observes that the permission for the return of 20% of the prisoners from Turkey to their homes in the north of Cyprus could only be achieved with difficulties, but one could assume in the circumstances that the remainder of this group of prisoners were persons who had actually opted for their release to the south (2). On the other hand it appears from the testimony of witness Perkettis that prisoners were not asked where they wanted to be released (3).

196. With regard to persons who had been detained in detention centres in the north of Cyprus, the Commission finds it established that they were virtually barred from returning to their homes in the north of Cyprus. Only very few of them were released in the north. This is recorded in public documents of the United Nations (4). Moreover, the statements made by the UNHCR and ICRC representatives at the intercommunal meeting of 7 February 1975 (5), the record of which the Commission accepts as correct, indicate that the will of these persons to remain in the areas under Turkish control was broken by the conditions imposed on them. Mr Zuger expressly stated, "They want to go south because they are not allowed to go back to their homes".

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(1) Cf paras 137-142 above.
(2) Cf paras 154-156 above.
(3) Cf para. 157 above.
(4) Cf para. 144 above.
(5) Cf para. 133 above.

In addition, some witnesses conveyed their impression that the detention centres were a special device for the evacuation of the Greek Cypriot population from the north of Cyprus (1). As a result of the non-participation by the respondent Government in the proceedings on the merits, the Commission has been unable further to investigate the purposes of those centres. It notes, however, that the detainees were eventually moved to the south on the basis of agreements concluded by the applicant Government with the Turkish Cypriot administration. In the light of the above the Commission finds a strong indication that evacuation of the Greek Cypriot population was a purpose of the detention centres.

197. The evidence before the Commission is clear as regards the circumstances of the displacement to the south of persons confined to the Kyrenia Dome Hotel (2). The Commission finds it established that the great majority of these persons were not allowed to return to their homes in Kyrenia. In this respect it accepts as credible the testimony of witness Charalambides, which is supported by UN documents. However, the UN reports do not state on what basis these persons were transferred to the south. The treatment of Dr Charalambides may be due to his prominent role as the only Greek Cypriot physician in the area and as former Deputy Mayor of Kyrenia. It cannot, therefore, be considered as representative.

(d) Negotiated transfer of medical cases and other persons on humanitarian grounds

198. Finally, the transfer to the south of medical cases and other persons for humanitarian reasons, whether on the basis of intercommunal agreements or individual arrangements, would appear to have been in the own interest of the persons concerned; indeed, it often happened upon their own request. The evidence before the Commission tends to show that the particular difficulty experienced by this category of persons was the removal of obstacles preventing their speedy transfer. The Commission, therefore, was unable to establish that their transfer, as such, was a forcible measure (3).

IV. The refusal to allow the return of refugees and expellees

199. It is common knowledge that the vast majority of Greek Cypriot displaced persons in the south of Cyprus have not returned to their homes in the north. While it may be that a

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(1) Cf para. 132 above.
(2) Cf paras 148-149 above.
(3) Cf.paras 159 et seq. and 198 above.

number of these persons do not want to return to an area at present under Turkish Cypriot administration, the fact remains that they are physically prevented from even visiting their houses in the north, and that they are not allowed to return there permanently. This has been established by the relevant UN documents, including reports on the implementation of resolutions of the General Assembly and the Security Council calling for such return, and is confirmed by the direct evidence obtained by the Commission's Delegation in Cyprus (1).

V. Separation of Greek Cypriot families brought about by their displacement

200. The Commission finds it established that, by the measures of displacement affecting a large number of Greek Cypriots, a substantial number of families were separated for considerable periods of time ranging from several days to more than a year. The refusal to allow the return of Greek Cypriot refugees to their homes in the north of Cyprus prolonged this situation and the intercommunal agreement of August 1975 did not completely solve the problem (2). The Commission has not been able, in the course of its limited investigation (3), to establish the exact numbers of persons and families affected.

E. Responsibility of Turkey under the Convention

I. Movement of persons provoked by the military action of Turkey in the phases of actual fighting, and refusal to allow the return of refugees to the north of Cyprus

201. In its decision on the admissibility of the present applications the Commission examined the question whether the responsibility of Turkey was engaged because "persons or property in Cyprus have in the course of her military action come under her actual authority and responsibility at the material times". The Commission concluded that the armed forces of Turkey brought any other persons or property in Cyprus "within the jurisdiction" of Turkey, in the sense of Art. 1 of the Convention, "to the extent that they exercise control over such persons or property" (4).

202. The Commission has considered the question of the imputability to Turkey, under the Convention, of the movement of persons provoked by her military action (5). However it

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(1) Cf paras 166-178 above.
(2) Cf paras 179-183 above.
(3) See Part I, para. 77 above.
(4) See Appendix I, para. 10 of The Law
(5) Cf paras 107 et seq. above.

does not think it necessary or useful to answer this question, having regard to its finding, set out in the following paragraph, as to the refusal to allow refugees to return to their homes in the northern area of Cyprus.

203. As regards this refusal, the evidence before the Commission shows that Turkey encouraged and actively supported the policy of the Turkish Cypriot administration not to allow the return of Greek Cypriot refugees to their homes in the north of Cyprus. This support was not limited to diplomatic action such as declarations against the return of Greek Cypriots to the north of Cyprus in the General Assembly of the United Nations (1), votes cast against resolutions calling for such return (2), and transmission of statements by representatives of the Turkish Cypriot community opposing such return (3). It also included the prevention, by the presence of her army in the north of Cyprus and the sealing off of the demarcation line by fortifications and minefields, of the physical possibility of the return of Greek Cypriot refugees to their homes in the north (4). The Commission considers that by these measures preventing their return to the north, Turkey exercised in effect a control which in this respect brought the said persons under her jurisdiction within the meaning of Art. 1 of the Convention as interpreted in the Commission's decision on admissibility. The refusal to allow the return of Greek Cypriot refugees to their homes in the north of Cyprus must therefore be imputed to Turkey under the Convention.

II. Measures of displacement not directly connected with the Turkish military action in the phases of actual fighting

(a) Measures of displacement within the northern area of Cyprus and expulsion across the demarcation line

204. The Commission finds it established that Turkish troops actively participated in the following measures of displacement (5):

- eviction of Greek Cypriots from houses including their own homes in the north of Cyprus;

- transportation of Greek Cypriots to other places within the territory controlled by the Turkish army, including various detention places;

- expulsion of Greek Cypriots across the demarcation line; and

- removal to the south brought about by living conditions in the north (6).

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(1) Cf paras 171-175 above.
(2) Cf para. 174 above.
(3) Cf para. 176 above.
(4) Cf para. 168 above.
(5) Cf paras. 190-193 above.
(6) Cf para. 196 above.

These measures were carried out while the persons concerned were under the actual control of the Turkish armed forces and hence within the jurisdiction of Turkey in the meaning of Art. 1 of the Convention as interpreted in the Commission's above decision. The displacement of Greek Cypriots from their homes, which was the result of these measures, must therefore be imputed to Turkey under the Convention.

(b) Negotiated transfer of persons to the area controlled by the applicant Government, and refusal to allow their return to the north of Cyprus

205. The Commission has considered the question of the imputability to Turkey of the negotiated transfer of persons to the south of Cyprus (1). However, it does not think it necessary or useful to answer this question, having regard to its finding as to the refusal to allow transferred persons to return to their homes in the northern area.

As regards this refusal, the situation of persons transferred to the south of Cyprus under the various intercommunal agreements is the same as that of refugees; the refusal to allow the return of transferred persons to their homes in the north of Cyprus must be imputed to Turkey on the same grounds as the refusal to allow the return of refugees (2).

III. Separation of families

206. The separation of Greek Cypriot families resulting from measures of displacement imputable to Turkey under the Convention, for the reasons set out above, must be imputed to Turkey on the same grounds. It follows that the continued separation of families resulting from the refusal to allow the return of Greek Cypriot refugees to their homes and family members in the north must be imputed to Turkey as well as the separation of families brought about by expulsions of certain family members across the demarcation line or by transfers of members of the same family to different places of detention (3).

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(1) Cf paras 194-197 above. See also para. 204 in fine.
(2) See para. 203 above.
(3) Cf para. 200 above.

F. Conclusions

I. General

207. The Commission has examined the complaints concerning the displacement of Greek Cypriots under Art. 8 of the Convention (1). It notes that Protocol No. 4 concerning such rights as inter alia the right to liberty of movement and choice of residence has not been ratified by the Parties. In any case, Art. 8 is not affected by the Protocol.

II. Movement of persons provoked by the military action of Turkey in the phases of actual fighting and refusal to allow the return of refugees

208. As stated above (2), the Commission did not express an opinion as to the imputability to Turkey under the Convention of the refugee movement of Greek Cypriots caused by the Turkish military action in the phases of actual fighting. Since in any case the refusal to allow the return of those refugees to their homes in the north of Cyprus must be imputed to Turkey, the Commission also limits its conclusion to this aspect of the matter.

The Commission considers that the prevention of the physical possibility of the return of Greek Cypriot refugees to their homes in the north of Cyprus amounts to an infringement, imputable to Turkey, of their right to respect of their homes as guaranteed in Art. 8 (1) of the Convention. This infringement cannot be justified on any ground under para. (2) of this Article.

The Commission concludes by 13 votes against one that, by the refusal to allow the return of more than 170,000 Greek Cypriot refugees to their homes in the north of Cyprus, Turkey did not act, and was continuing not to act (3), in conformity with Art. 8 of the Convention in all these cases.

III. Measures of displacement not directly connected with the Turkish military action in the phases of actual fighting

(a) Measures of displacement within the north of Cyprus and expulsions across the demarcation line

209. The Commission considers that the evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an

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(1) For text, see para. 100 above.
(2) See para. 202.
(3) As of 18 May 1976 (see para. 5 above).

interference with rights guaranteed under Art. 8, para. (1) of the Convention, namely the right of these persons to respect for their home, and/or their right to respect for private life. The Commission further considers that the transportation of Greek Cypriots to other places, in particular the forcible excursions within the territory controlled by the Turkish army, and the deportation of Greek Cypriots to the demarcation line, which are equally imputable to Turkey under the Convention, also constitute an interference with their private life. However, in so far as the displacement of Greek Cypriots within the north of Cyprus was a necessary corollary of their detention, it must, together with that detention, be examined in Chapter 2 (deprivation of liberty).

The above interferences by the Turkish army in the north of Cyprus with rights guaranteed under Art. 8, para. (1) cannot be justified on any ground under para. (2) of Art. 8.

The Commission concludes, by 12 votes against one, that by the eviction of Greek Cypriots from houses, including their own homes, by their transportation to other places within the north of Cyprus, or by their deportation across the demarcation line, Turkey has committed acts not in conformity with the right to respect for the home guaranteed in Art. 8 of the Convention.

(b) Negotiated transfer of persons to the area controlled by the applicant Government, and refusal to allow their return to their homes in the north of Cyprus

210. As stated above (1), the Commission did not express an opinion as to the imputability to Turkey under the Convention of the transfers of Greek Cypriots to the south of Cyprus under various intercommunal agreements. Since in any case the refusal to allow the return of these persons to their homes in the north of Cyprus must be imputed to Turkey, the Commission limits its conclusion to this aspect of the matter.

The Commission considers that the prevention of the physical possibility of the return of these Greek Cypriots to their homes in the north of Cyprus amounts to an infringement of their right to respect of their homes as guaranteed in Art. 8 (1) of the Convention. This infringement cannot be justified on any ground under para. (2) of this Article.

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(1) See para. 205.

The Commission concludes, by 13 votes against one, that, by the refusal to allow the return to their homes in the north of Cyprus to several thousand Greek Cypriots who had been transferred to the south under intercommunal agreements, Turkey did not act, and was continuing not to act (1) in conformity with Art. 8 of the Convention in all these cases.

IV. Separation of families

211. The Commission finds that the separation of families brought about by measures of displacement imputable to Turkey under the Convention (2) are interferences with the right of the persons concerned to respect for their family life as guaranteed by Art. 8 (1) of the Convention. These interferences cannot be justified on any ground under para. (2) of this Article.

The Commission concludes by 14 votes against one with one abstention that, by the separation of Greek Cypriot families brought about by measures of displacement in a substantial number of cases, Turkey has again not acted in conformity with her obligations under Art. 8 of the Convention.

V. Reservation concerning Art. 15 of the Convention

212. The Commission reserves for consideration in Part III of this Report the question whether any of the above interferences with rights protected by Art. 8 were justified as emergency measures under Art. 15 of the Convention.

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(1) As of 18 May 1976 (see para. 5 above).
(2) Cf paras 179 et seq., 200 and 206 above.

Chapter 2 - Deprivation of Liberty

Introduction

213. The Commission will deal with the allegations in the two applications concerning the deprivation of liberty of Greek Cypriots by the Turkish armed forces in Cyprus in the following order:

- the alleged general deprivation of liberty of that part of the Greek Cypriot population which remained in the north of Cyprus after the military action of Turkey ("Enclaved persons");

- the alleged deprivation of liberty of Greek Cypriot civilians who, according to the applicant Government were concentrated in certain villages in the north, in particular Gypsou, Marathovouno, Morphou, Vitsada and Voni, or in the Dome Hotel at Kyrenia ("Detention centres");

- the deprivation of liberty of persons referred to as "prisoners and detainees" in the intercommunal agreements, including persons detained in the mainland of Turkey or at Pavlides Garage and Saray Prison in the Turkish sector of Nicosia ("Prisoners and detainees").

214. As stated above (1) the Commission will not consider as separate issues the applicant Government's allegations concerning deprivation of liberty of Greek Cypriots arrested at the demarcation line.

A. "Enclaved persons"

I. Submissions of the Parties

(1) Applicant Government

215. The applicant Government alleged generally that the Turkish armed forces were arbitrarily detaining a great number of Greek Cypriot civilians of all ages and both sexes in the north of Cyprus (2).

216. They described the enclaved population as a whole as being at the mercy of the Turkish forces, as hostages not allowed to move from their "places of detention".(3).

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(1) Cf para. 88.
(2) Cf Application I, para. 3 and Application II, para. 3 g.
(3) Particulars I, para. 20 G.

217. In the Government's view the remaining enclaved Greek Cypriot inhabitants in the north of Cyprus (about 9,000) were virtually under detention because, though allowed to move to the south (1), they were not allowed freedom of movement in the north. They were subjected to a curfew between 9.00 p.m. and 6.00 a.m., were not allowed to go to their fields unless they obtained special permission and, in any case, they were not allowed to move from one village to another. The enclaved persons were under the continuous supervision of the Turkish authorities. In particular the ex-prisoners who had been detained in Turkey and were now residing in the Turkish-occupied areas were forced to present themselves to the police twice a day. Many of them were arrested for interrogation or put in prison for reasons such as failure to salute members of the Turkish army (2).

(2) Respondent Government

218. The respondent Government who, for the reasons stated above (3), did not take part in the proceedings on the merits, have not made any statements with regard to these allegations.

II. Relevant Article of the Convention

219. The Commission considers that the restrictions imposed on the liberty of the so-called enclaved persons in the north of Cyprus, as complained of in the present applications, may raise issues under Art. 5 of the Convention. It notes in this connection the applicant Government's view that the enclaved persons "could virtually be described as being under detention" (4).

220. Art. 5 of the Convention reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
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> (a) the lawful detention of a person after conviction by a competent court;
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> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

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(1) Cf Chapter 1, para. 178 above.
(2) Particulars II, para. 12 g.
(3) Cf Part I, para. 23.
(4) Cf the Government's statement in Particulars II, quoted in para. 217 above.

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

III. Evidence obtained

221. It is common knowledge that a fraction of the Greek Cypriot population of northern Cyprus remained there after the Turkish military operation. Their number was, according to UN documents about 15,000 in December 1974 (1), and about 10,500 (plus some 1,000 Maronites) in June 1975 (2).

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(1) UN Doc. S/11568, para. 43.
(2) UN Doc. S/11717, para. 36.

222. According to a progress report of the UN High Commissioner for Refugees of 31 October 1974 (1), among the 15,000 Greek Cypriots then in the north of Cyprus there were about 7,000 to 8,000 who had been by-passed by military operations and were still living in their own villages, mostly in Northern Karpasia; the economic life of the people in these villages was disrupted but their situation was better than that of other Greek Cypriots in the northern area who had either been re-grouped in churches, schools, hotels or other public buildings, or were isolated in their own villages (2).

223. It appears from further UN reports that most of the enclaved persons who remained in the north of Cyprus until June 1975 were still in their own homes while the majority of other persons who had been detained in various forms had already been transferred to the area controlled by the applicant Government (3). It was also reported that the enclaved persons lived in difficult conditions with restrictions on their movement outside their own village areas. Owing to the disruption of the economy they were in need of assistance which was provided by the applicant Government and delivered regularly by UNFICYP (4). The humanitarian teams who had access to the Greek Cypriot villages in the north of Cyprus had to be accompanied by Turkish liaison officers. Efforts of UNFICYP to establish observation posts in the vicinity of Greek Cypriot villages and to arrange patrols in order to ensure the security of Greek Cypriots in the north of Cyprus, in a similar way as it did in respect of Turkish Cypriot enclaves in the south, were unsuccessful (5).

224. Some information concerning the living conditions of enclaved Greek Cypriots was given by witnesses to the Commission's Delegation.

The Commission here notes in particular the evidence given by witness Stylianou, a schoolteacher and chairman of "Panoyprian Committee of Enclaved Persons". He stated that this private association had collected information concerning the enclaved persons from various sources, including the statements of persons who had been able to leave the northern area, and letters written by enclaved persons to their relatives in the south (6).

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(1) UN Doc. S/11488/Add. 2, para. 2 c.
(2) For the latter category of persons see sub-section B below.
(3) Cf Chapter 1 above, in particular paras 131 et seq.
(4) Cf UN Doc. S/11717, paras 36 and 40.
(5) Cf Un Docs S/11568, paras 23 and 33; S/11624, para. 17, and S/11711, para. 7.
(6) Cf Verbatim Record, p. 37.

225. According to the witness, there were approximately 8,000 Greek Cypriots enclaved in the Karpasia area, 2,000 in the Kyrenia district and some hundred in other areas (1). It appears that these figures also include persons in detention centres which will be dealt with separately (2).

The witness stated (3) that a curfew prevented the enclaved persons from leaving their homes during the day hours, from 6.00 a.m. until 9.00 p.m. "in the Turkish area", and until 8.00 p.m."in Greek areas". The enclaved persons were not allowed to travel between one village and another, or to go beyond a certain distance (1 km or 1 mile) from their homes; they were not even allowed to go to their fields in order to work there (4). The same restrictions applied throughout the area controlled by the Turkish forces, but there were additional restrictions in the Kyrenia district, where Greek Cypriots were not allowed to leave their houses or to go on their verandahs. In Kyrenia city they needed escorts even to go to the church, and sometimes escords were refused. Thus, Greek Cypriots in Kyrenia were not able to buy meat for about a month because they were refused escorts to the market. The witness considered that most Greek Cypriots in the Kyrenia area would like to leave and come to the south, while those in Karpasia, owing to the fact that they were not ill-treated, would stay for the time being in order to see what solution would be reached (5).

226. Witness Stylianou further stated (6) that those Greek Cypriots who were allowed to return to the area controlled by Turkish forces pursuant to the provisions of the inter-communal agreement of August 1975 concerning the reunification of families (7) were, in fact, going back to a curfew. They were willing to do so in order to join their families, to look after their properties,and because they believed that the Karpasia area would eventually be returned to the Greek Cypriots, so that they could hope to be free after some months.

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(1) Cf Verbatim Record, p. 32. The witness also gave figures as of August 1975 and submitted tables showing the distribution of enclaved persons on 14 January 1975 (Addendum, pp. 25-28).
(2) See sub-section B below.
(3) Verbatim Record, pp. 32-33.
(4) Cf UN Doc. S/11468/Add . 1, para. 8, of 10 September 1974 according to which the inhabitants of the Karpasia area were hampered in the harvesting of the tobacco crop "since most of the young men have been detained".
(5) Verbatim Record, p. 36.
(6) Verbatim Record, pp. 35-36.
(7) See Chapter 1 above, para. 178.

227. Of the witnesses heard by the Commission's Delegation, only one remained for a considerable time in the area controlled by the Turkish forces: Dr Charalambides, former Deputy Mayor of Kyrenia, who took refuge in the Dome Hotel where he remained until 5 April 1975. As a physician he was allowed to leave the hotel escorted by a Turkish Cypriot policeman in order to see his patients (1). Thus he could give a description not only of the conditions of Greek Cypriots in the Dome Hotel (2), but also of the living conditions of Greek Cypriots in the town of Kyrenia. He stated (3) that about 200 of them stayed in Upper Kyrenia in their own homes until April 1975 when he left. The relations between Greek Cypriots and Turkish Cypriots in that neighbourhood which comprised Greek Cypriots and Turkish Cypriots had been traditionally good, and remained so after the Turkish military action. The Greek Cypriots there were protected by their Turkish Cypriot neighbours. They were allowed to go into the street and to shop up to 9 o'clock in the evening.

The witness further stated that apart from the Greek Cypriots in the Dome Hotel and those in Upper Kyrenia no Greek Cypriots remained in the town.

228. Other witnesses heard by the Delegation could only give fragmentary information about the enclaved Greek Cypriots in the north of Cyprus.

Witness Hadjiloizou stated that pressure was exerted upon some influential persons in the Karpasia area by stating that they were under suspicion of the possession of weapons, or of keeping contacts with persons who were hiding in the mountains etc. (4). Witness Odysseos spoke of the situation of the remaining population of Morphou before they were transferred to the detention centre in the school in September 1974. He said there were searches, even during the night, in order to check their presence, and ill-treatments (5). Witness Iacovou was unable to explain any particular purpose of keeping Greek Cypriots under restrictions as enclaved persons. He said the Turkish forces had found them in the area under their control and considered that they used them later to extract some political advantage, e.g. when they started to expel them they thereby exerted pressure upon the applicant Government to allow the transfer of Turkish Cypriots to the north (6).

229. Written statements submitted by the applicant Government contain the following information about general restrictions imposed on the enclaved population:

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(1) Verbatim Record, p. 73.
(2) See below, sub-section B.
(3) Verbatim Record, pp. 82-83.
(4) Verbatim Record, pp. 69-70.
(5) Verbatim Record, p. 92.
(6) Verbatim Record, p. 172.

- A gardener of Vassily, Famagusta district, who had remained there until 30 June 1975 is recorded as having stated:

> "Most of the Greek Cypriots who are still in the Turkish occupied areas are terrified; they cannot move freely and they cannot go from one village to another without permission." (1)

- A married woman from Yialousa is recorded as having stated that in August 1974 a curfew was imposed from 6.00 p.m. to 6.00 a.m. daily which was still in force in February 1975 when she left (2).

IV. Evaluation of the evidence

230. The Commission has not been able, on the basis of the evidence before it, to establish a clear picture of the living conditions of the so-called enclaved Greek Cypriots in the north of Cyprus in so far as they were not subjected to special measures of detention (3). The evidence obtained from witnesses is fragmentary and partly contradictory, in particular with regard to the hours and other conditions of the curfew. Moreover, it is almost exclusively hearsay evidence with the exception of the evidence of Dr Charalambides in respect of conditions in Upper Kyrenia (4). The sparse information contained in UN documents and written statements submitted is not sufficient to complete the picture. The only findings which can be arrived at with some degree of certainty are:

- (a) that there has been a curfew involving confinement to houses, as a rule during the night hours, for the Greek Cypriot population in the north of Cyprus;

(b) that restrictions have been imposed on the freedom of movement of Greek Cypriots in the north of Cyprus outside their villages.

231. The exact conditions of the curfew and its application (5) as well as the scope and application of the restrictions on the movement of persons outside villages have not been further investigated. The Commission observes in this connection that investigations would have had to be carried out in the north of Cyprus to which access has not been granted to its Delegation.

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(1) Statements II, No 16, at p. 3.
(2) Statements II, No 20.
(3) See sub-section B below.
(4) Para. 227 above.
(5) In particular whether there was also a curfew during the day hours as stated by witness Stylianou (see para. 225 above). The applicant Government only complained of a curfew at night (cf para. 217 above).

V. Responsibility of Turkey under the Convention

232. Since the Commission has not been able to establish all the relevant facts with regard to the present allegations, it is also unable to determine to what extent the treatment of the enclaved Greek Cypriot population is imputable to Turkey under the Convention. In particular it has not established whether the curfew and restrictions of movement were proclaimed by the Turkish military authorities, or by the Turkish Cypriot Administration - either on their own initiative or on instructions of the Turkish authorities.

233. However, on the basis of the evidence before it, the Commission finds indications that the restrictions of movement and, to a lesser degree, the curfew, were enforced with the assistance of the Turkish army: while reference to members of the Turkish Cypriot police are frequent in statements concerning searches and controls which were carried out during night-time, it seems that the movement of persons between villages was more closely controlled by the Turkish armed forces. Such control confirms that the persons concerned were under the jurisdiction of Turkey within the meaning of Art. 1 of the Convention.

VII. Conclusions

234. The Commission has examined the general restrictions imposed on the liberty of Greek Cypriots in the north of Cyprus in the light of the provisions of Art. 5 of the Convention (1). In this connection it has also noted the provisions of Art. 2 of Protocol No 4 to the Convention according to which everybody lawfully within the territory of a State has the right to liberty of movement within that territory.

235. The Commission, by eight votes against five votes and with two abstentions, first considers that, on the basis of the evidence before it (2), it is sufficiently informed to draw the conclusion that the curfew imposed at night on enclaved Greek Cypriots in the north of Cyprus, while a restriction of liberty is not a deprivation of liberty, within the meaning of Art. 5 (1) of the Convention.

236. The Commission, by twelve votes with two abstentions, further considers that, on the basis of the evidence before it (3), it is sufficiently informed to draw the conclusion that the alleged restrictions of movement outside the built-up area of villages in the north of Cyprus would fall within

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(1) Cf para. 220 above.
(2) Cf paras 230-231.
(3) Cf paras 230-231.

the scope of Art. 2 of Protocol No 4, which has not been ratified by either Cyprus or Turkey, rather than within the scope of Art. 5 of the Convention. The Commission is therefore unable to find a violation of Art. 5 of the Convention in so far as the restrictions imposed on Greek Cypriots in order to prevent them from moving freely outside villages in the north of Cyprus are imputable to Turkey.

B. "Detention centres"

I. Submissions of the Parties

(1) Applicant Government

237. The applicant Government submitted that in the north of Cyprus the Turkish armed forces detained thousands of persons arbitrarily and with no lawful authority (1); they stated that this detention occurred essentially in certain "concentration camps", the worst of which were Voni, Marathovouno, Vitsada and Gypsou (2).

238. The Government first alleged that, on entering any inhabited area, the Turkish forces at once arrested the Greek Cypriot inhabitants and detained them because they were Greeks: the same course was followed in respect of any Greek Cypriot met on the way of the invading army (3).

According to the Government, those who were not detained as prisoners-of-war (4); i.e. women, children and old men, were put in "concentration camps", if they were not expelled (5). In those camps hundreds of persons from small babies to old people of 90 were kept in small spaces under bad conditions without sanitary facilities (6) and were not allowed to move out. Detainees were often moved from one concentration area to another and regrouped (7).

239. The applicant Government also complained of the detention by the Turkish authorities of some 3,000 inhabitants of the Kyrenia district in the Kyrenia Dome Hotel and in Bellapais village. They stated that most of these persons

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(1) Cf Application I, para. 3, and Application II, para. 3 g.
(2) Particulars I, paras 20 G and 23.
(3) Particulars I, paras 20 G and 22 B (i).
(4) For detention of persons classified as "prisoners and detainees" who were sometimes designated as "prisoners of war", cf sub-section C below.
(5) For cases of forcible displacement to the south of Cyprus by the deportation of groups of persons across the demarcation line see Chapter 1 above.
(6) For conditions of detention see Chapter 4 B below.
(7) Particulars I, para. 23.

were arrested in their houses by the Turkish army and transported to the said places of detention. The rest were forced during the first days of the invasion to take refuge there. In November 1974 the Turkish military authorities continued to detain about 450 of those persons at the Dome Hotel and 1,000 at Bellapais. The detainees were not allowed to move from their places of detention to their nearby houses (1).

240. In their second application the applicant Government submitted that additional concentration camps had been established for the purpose of the detention of Greek Cypriot civilians in the north of Cyprus (2).

They distinguished between the additional "concentration camp" at Morphou established after the filing of the first application, and other places of detention including:

- the Dome Hotel in Kyrenia - 53 detainee;
- Lapithos (Kyrenia) - about 150 detainees;
- Larnaca of Lapithos (Kyrenia) - about 30 detainees;
- Trikomo (Famagusta) - about 120 detainees;
- Kondemenos (Kyrenia) - about 8 detainees;
- Kalopsida (Famagusta) - about 10 detainees;
- Spathariko (Famagusta) - about 9 detainees (3).

It was further stated that the Morphou concentration camp was gradually evacuated so that there remained only about 30 detainees by March 1975, and only 12 by July 1975, and that the detainees in the last three of the detention places above were expelled to the Government controlled areas in the summer of 1975 (4).

(2) Respondent Government

241. The respondent Government who, for the reasons stated above (5), did not take part in the proceedings on the merits, have not made any statements with regard to the above allegations.

II. Relevant Articles of the Convention

242. The Commission considers that the above allegations concerning the concentration of Greek Cypriots in the north of Cyprus in certain detention centres raise issues under Art. 5 of the Convention (6). The question whether the conditions of this confinement raise issues under Art. 3 of the Convention will be dealt with separately (7).

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(1) Particulars I, para. 20 G at p. 15.
(2) Application II, para. 3 g.
(3) Particulars II, para. 12 g.
(4) Ibid.
(5) See Part I, para. 23.
(6) For the text of Art. 5 see para. 220 above.
(7) See Chapter 4 B below.

III. Evidence obtained

243. It appears from the evidence before the Commission that, besides a fraction of the Greek Cypriot population in the north of Cyprus who had been by-passed by the military events of 1974 and continued to live in their villages in the said territory as "enclaved persons", i.e. under a curfew and restrictions imposed upon their freedom of movement within that territory (1), there was a considerable number of Greek Cypriots, scattered over the area more directly affected by the Turkish military action, who were originally also "enclaved", but who were soon subjected to a status of strict confinement in certain locations.

244. The evidence shows that these locations included:

(a) larger detention centres in schools and churches, where several hundred persons were kept, in particular in the villages of Gypsou, Marathovouno, Vitsada, Voni and, somewhat later, Morphou (2);

(b) private houses, where smaller groups of persons were confined (3);

(c) the Dome Hotel at Kyrenia, where Greek Cypriots were originally under UN protective custody (a similar situation existed in the village of Bellapais) (4).

245. The persons kept in any of these locations were not included in the category of "prisoners or detainees" referred to in the intercommunal agreements and in UN documents. They were, however, repeatedly mentioned in these instruments as a separate group of persons, in particular in connection with arrangements for their transfer to the south of Cyprus (5).

246. The evidence concerning the character of confinement in each category of the above locations will be set out separately in the following paragraphs.

(a) Confinement to detention centres established in schools and churches

247. The Commission has already found that many Greek Cypriots in the north of Cyprus were moved from their places of residence to other places within the territory controlled by the Turkish army (6). It has found that many civilians were either brought to, or ordered to gather at certain central

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(1) Cf sub-section A above.
(2) Cf paras 247-258 below.
(3) Cf paras 259-265 below.
(4) Cf paras 266-273 below.
(5) Cf Chapter 1 above, paras 144, 146, 148.
(6) Cf Chapter 1 above, paras 117-122.

assembly points in their respective villages, usually the school or the church (1). While most of these assembly points appear to have been of a temporary character (2), some became more permanent places of detention to which also Greek Cypriots from the surrounding villages were brought.

248. On the basis of the material before it the Commission has not been able to establish an exhaustive list of these detention centres. It observes that the five villages Voni, Marathovouno, Vitsada, Gypsou and Morphou to which most of the evidence is related were usually cited by way of exemplification, presupposing that there were other places where similar conditions prevailed. Such other places, however, have not been identified and it was thus not possible to investigate the conditions of confinement existing there. The Commission must therefore limit its findings to the five centres mentioned above.

249. UN documents concerning these centres include:

- a report of the Secretary General of 18 September 1974 according to which "Greek Cypriots have been gathered into a number of centralised locations. The principal areas are at Gypsos (Famagusta district), 500, Marathovouno (Famagusta district), 400, and Voni (Nicosia district), 800 (3);

- a further report of 17 October 1974 according to which UNHCR representatives, accompanied by Red Crescent officials, visited groups of Greek Cypriots in the north, following which UNFICYP delivered blankets and food supplies to needy Greek Cypriots in Voni, Gypsou, Vitsada and Dhavlos (4). The same report stated that the conditions of some 2,000 Greek Cypriots, mostly old people, living in central locations in areas under Turkish control gave cause for concern. These remarks did not include the 400 Greek Cypriots in the Morphou area and 2,500 Greek Cypriots still living in the villages in the Kyrenia area who were also reported to live in difficult conditions (5);

- a report by the United Nations High Commissioner for Refugees of 30 October 1974, referring to Greek Cypriots in the northern area who had either been regrouped in

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(1) Cf Chapter 1 above, para. 118.
(2) E.g. the church and school of the village Palekythro, to which many of the written statements submitted by the applicant Government refer (cf Statements I, Nos 12, 29, 41, 49, 58, 71, 89, 103, 107, 109, 112, 113). A UN report of 5 August 1974 (UN Doc. S/11353/Add. 15, para. 8 a) referred to assembly points "principally in Kyrenia (Dome Hotel), Bellapais, Karmi and Trimithi".
(3) UN Doc. S/11468/Add. 2, para. 11.
(4) UN Doc. S/11468/Add. 4, para. 8.
(5) UN Doc. S/11468/Add. 4, para. 11.

churches, schools, hotels or other public buildings, or were isolated in their own villages, consisting almost exclusively of aged persons, invalids, women and children (1);

- a section of the progress report on the UN Operation in Cyprus during the period May-December 1974 summarising the arrangements for the transfer of persons kept in detention centres to the south of Cyprus. It read: "Some 2,500 Greek Cypriots have been living in poor conditions in the areas in the north where they have been concentrated, ... At the meeting between Mr Clerides and Mr Denktash in 11 November it was agreed that about 1,500 Greek Cypriots located at Voni (....) and Gypsou (....) would be evacuated to the south ...." (2);

- a section of the progress report on the UN Operation in Cyprus during the period December 1974 - June 1975 stating that 250 Greek Cypriots were concentrated in Morphou from surrounding villages, of whom all but 21 were evacuated to the south (3).

250. Statements made in an intercommunal meeting on 7 February 1975 by representatives of ICRC and UNHCR, which were later made public by the applicant Government and submitted to the Commission (4), describe the situation in Morphou as being similar to that which existed in Voni, Gypsou and Vitsada. The ICRC representative, Mr Zuger, mentioned the following elements of the confinement which may be relevant under Art. 5 of the Convention:

- the persons concerned were mostly elderly men and women and young children;

- they were brought from villages to Morphou;

- they were placed in a school building, under crowded conditions and under guard;

- they were not permitted to go outside the school building.

The UNHCR representative, Mr Kelly, mentioned:

- that the persons concerned were moved from their villages to Morphou by the Turkish army against their will and without an explanation given to them;

- that they were confined to a school building under deplorable physical conditions;

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(1) UN Doc. S/11488/Add. 2, Annex, para. 20.
(2) UN Doc. S/11568, para. 47; see also Chapter 1 above, paras 144-145.
(3) UN Doc. S/11717, para. 40; see also Chapter 1 above, para. 146.
(4) For full text and reference see Chapter 1 above, para. 133.

- that they were not allowed to move out of the building;

- that they were not allowed to move their furniture or their personal belongings except a few clothes.

251. Witness Soulioti submitted to the Commission's Delegates the report of a French journalist (1), who stated: He visited Gypsou on 4 October 1974, with the permission of Turkish military authorities and in the company of Turkish army officers. He had to pass through a gate in a barbed wire barricade before arriving at the inhabited area of the village. He visited some private houses which were still inhabited, and there were almost exclusively women (2). The men were kept in the village school. He managed to obtain permission to visit the school as well. There he saw 245 persons between 50 and 85 years of age. One of them said that some of them were very ill. They had been brought to the school after having been collected from the surrounding villages; they could not go out and did not possess anything but the clothes they had on them when the Turks took them with them (3). There were also children in the school. The Turks said they were awaiting the re-opening of the school, but the school had been destroyed. The official reason for keeping these children in the "school-prison", as it was called by the journalist: they had tried to steal food (4).

It further appears from the journalist's report that the detainees in the school were not allowed to see their wives. Only occasionally a wife was allowed to bring them soup or coffee. The journalist was told that there would have been enough place in the village to house all the detainees.

252. Witness Soulioti also submitted tables prepared by the Cyprus Red Cross Society from their files containing details of persons transferred to the detention centres Gypsou, Morphou, Vitsada and Voni (5). The data in these tables are incomplete, but they include at least some information as to the places from which, and the dates at which persons were transferred to the camps.

The relevant data, arranged in a slightly different manner, are set out below.

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(1) Addendum, pp. 19-21.
(2) Cf para. 260 below.
(3) Addendum, p. 20.
(4) Addendum, p. 21.
(5) Addendum, pp. 22.23.

Transfer of persons to detention centres

Detention Centre	Total number of detainees	Number of persons transferred	from	date
Gypsou	1,231	74	Milia	2. 9.74
		26	Lefkonico	2. 9.74
		127	Akanthou	5. 9.74
		35	-	8. 9.74
		130	Mandres	8. 9.74
		17	Flamoudi, Tripimeni, Koutsovenis	8. 9.74
		36	Pygi, Syngrasi, Lapathos	8. 9.74
		132	Gypsou	8. 9.74
		654	-	25. 9.74
Morphou	579	110, 175	-	5. 9.74
		51	-	26. 9.74
		56	-	2.10.74
		19	-	11.10.74
		+168 to houses in Morphou	-	9.10 - 1.11.74
Vitsada	569	114	Marathovouno	5.10.74
Voni	635	51	-	8. 9.74
		9	-	21. 9.74
		19	-	28. 9.74
		8	Kythrea	14.10.74
		548	-	8.10.74

253. In her oral testimony concerning the detention centres (1) witness Soulioti referred to them as "concentration areas". She said that she was first informed of the conditions in these centres by the French journalist mentioned above who came to see her after his visit to Gypsou and appealed to the Red Cross to do everything possible for the persons concerned. His statements were later confirmed by persons who had been transferred from Gypsou and Voni.

254. Witness Souioti had the impression that the detention centres were really "concentration camps". They were set up during the second phase of the Turkish military action and were: Voni, Gypsou, Vitsadha and Marathovouno to the east of Kyrenia and Morphou in the west. The people remaining in, and even those emanating from the villages, especially round the Kythrea area, were taken from their homes and concentrated,

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(1) Verbatim Record, pp. 7-11.

the men in the church in one instance, and the women in the school or various houses. The people put in churches, schools or houses were guarded by soldiers; they were not allowed to leave these premises. This was especially the case in Morphou. In other camps they were not allowed to communicate with each other either, to go from one room to the other, or from one house to the other. The persons concerned included old people and children, even babies. At first neither the Red Cross nor the UN had access to these places, but finally the International Red Cross was allowed to visit them, in late September 1974. According to the witness the commanders of all the detention centres were Turks from the mainland, although some of the guards were Turkish Cypriots. The total number of people in these camps was about 2,440. They were evacuated between 15 November and 29 November 1974 after an intercommunal agreement, brought over by the ICRC and all delivered to the Cyprus Red Cross Society of which the witness is the President.

255. Witness Odysseos, barrister-at-law and former Chairman of the Morphou School Committee, stated (1) that one of the schools in Morphou, the so-called second elementary school, was converted into a "concentration camp". From statements he had collected out of a private interest he knew that sometime in September 1974 all the people who had remained in Morphou (about 600) were moved to the school building. First, they were harassed in their own homes, and they were told: "You better move to the school, it is safer there". An old epileptic women he knew was transported to the school in a lorry. All these people were accommodated in the school building and a private house just next to it. These buildings were only about 50 yards from the police station. The persons detained there were not allowed to take any belongings with them. They were accompanied, and during night time they were not allowed out at all. No exercise was allowed, and the detainees could only move in the room where they were staying. At the beginning the Red Cross was not allowed to visit these people. Later they could come every fortnight and occasionally every week. There was barbed wire behind the school building. Nobody, not even the Morphou people, was allowed to go home to fetch personal belongings. Some elderly people were eventually removed from the school building and put into private residences (2). According to the witness the detention centre of Morphou existed from September 1974 until July 1975 when the last detainees were released. Some people were also brought to the centre from surrounding villages (Kapouti, Syrianokhori, Zodia, Prastio, Argaki, Katokopia, Pendayia) early in 1975.

256. Witness Iacovou, Director of the Special Service for the Care and Rehabilitation of Displaced Persons, explained to the Commission's Delegation that the Special Service was

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(1) Verbatim Record, pp. 92-96.
(2) Cf para. 262 below.

inter alia responsible for providing the food deliveries for the Greek Cypriots enclaved in the north of Cyprus (1). He stated further that the conditions mentioned in the Zuger and Kelly statements mentioned above (2) were not to be found throughout the area controlled by the Turkish army. They were typical of Morphou, Gypsou, Voni and Vitsada, which were "very little less than concentration camps". According to his knowledge only a few hundred people were involved in all this (3).

257. The Commission's Delegation also heard some persons in refugee camps who stated that they themselves and/or members of their families were detained in one or other of the above-mentioned centres.

Thus refugee D, a farmer from Palekythro, stated that he was taken to Voni on 21 August 1974, eight days after the Turkish troops had advanced to his area. According to him 500 people were kept there, the men in the church, the women and children in the school, and some old people in private houses. They were all guarded by the Turks. In the church, where he was kept, there were about 120 persons. They were not allowed to leave the church to pass water, but people went to a flour store close by and to houses in the village in order to provide themselves with food. He stayed in Voni for about three months. The camp was evacuated in batches. About 200 people left in groups of 10 to 50 (4).

Refugee J, a boy of eleven years of age, stated that he was kept in the school of Voni, together with the women. According to him the Turkish soldiers gave orders that if they left the school they would be shot (5).

Refugee B from Trakhoni stated that her father was detained in Voni. According to her account the people there were guarded by Turkish soldiers only, not by Turkish Cypriots, and they were punished if they did not obey their orders, e.g. not to speak to each other (6).

Refugee E stated that he was taken from his house in Kythrea to a house in Marathovouno where he was kept for three days, then to Vitsada, where he stayed for a month, and finally to Gypsou where he spent another three months (7).

258. Many of the written statements submitted by the applicant Government indicate that the authors were detained in one or several of the above-mentioned centres.

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(1) Verbatim Record, p. 161.
(2) Para. 250; for full text see Chapter 1 above, para. 133.
(3) Verbatim Record, p. 169.
(4) Addendum, pp. 9-10.
(5) Addendum, p. 14.
(6) Addendum, pp. 5-6.
(7) Addendum, p. 11.

Most of these statements refer to the conditions in Voni (1). On the whole they confirm the testimony of the persons in the refugee camps, with the exception of one saying that the guards were only Turkish Cypriots (2). According to another written statement a registration of detainees in Voni was made on 21 August 1974 by a Turkish officer with the assistance of a named Greek Cypriot, showing that there were 654 in all (3). Another statement said that detainees in Voni were not allowed to communicate with the persons in other premises (4).

A number of statements also referred to detention in Marathovouno, Vitsada and Gypsou (5). All the persons who stated that they had been detained in Marathovouno said that they were later transferred to Vitsada, and some eventually to Gypsou.

(b) Use of private houses for confinement

259. It appears from the testimony of witnesses and persons heard in refugee camps as well as from statements submitted by the applicant Government that a number of Greek Cypriots in northern Cyprus were confined to private houses and not allowed to leave them at all. Their situation was thus different from that of the "enclaved" Greek Cypriots mentioned above (6), and they were normally referred to by the witnesses as "detained persons".

260. The lists of numbers of persons transferred to detention centres submitted by witness Soulioti expressly state with regard to Morphou that out of a total of 579 detainees 55 were kept in a house in Miaoulis Street, 63 in a house in Apollon Street, and 50 in other houses (7). The report by a French journalist on conditions in Gypsou, submitted by the same witness (8), also distinguished between persons detained in houses (mostly old women) and those who were detained in the school. Witness Soulioti repeatedly mentioned private houses in connection with detention centres also in her oral statement to the Commission's Delegation (9).

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(1) Cf. Statement I, Nos. 1, 12, 41, 47, 49, 51, 72, 89, 98-105, 109, 111, 112, 119, 120, and Statements II Nos. 9, 13 and 19.
(2) Statements I, No. 98.
(3) Statements I, No. 41.
(4) Statements I, No. 111.
(5) Statements I, Nos. 71, 75, 76, 114-116; Statements II, Nos. 7 and 18.
(6) See sub-section A of this Chapter.
(7) Addendum, pp. 22-23; see also para 252 above.
(8) Addendum, pp. 19-21; see also para. 251 above.
(9) Verbatim Record, pp. 8-10.

261. Witness Stylianou similarly referred to the detention of small groups of persons in private houses which were not connected with detention centres, and gave figures for some villages in the Kyrenia district as of August 1975 (1). He stated that these small groups of e.g. only 5 people in one case (Ayia Irene) were regularly kept in one house, and in some cases, e.g. in Lapithos, in two or three houses, though there were 131 persons in all. They had been expelled from their own houses and transferred to other houses, and they were guarded by Turkish soldiers patrolling them (2).

262. Witness Odysseos mentioned private houses in connection with the detention centre in Morphou. From his statements it appears that in a small private house next to the school building which served as detention centre some 60 persons were kept under similar conditions as in the school (3). Later on, some elderly people were removed from the school and taken to three private residences in Morphou, namely some 50 to a pharmacist's house in Solomos Street, 30-35 to a house in Miaouli Street, and 48 to a house in Apollon Street. In February or March 1975 people from the villages Pendayia, Nikitas and Prastio were brought to these houses, and the last of them were only released in July 1975 (4). The same witness also referred to statements of persons who said they had been concentrated in two or three houses in Pendayia. They were brought there from surrounding villages, Xeros, Karavostassi, Potamos tou Kambou and Petra (5).

263. Witness Dryfon submitted some statements of persons which, he said, had been made to the Cyprus Land and Property Owners' Association of which he is the chairman. These persons stated that the Turkish forces had expelled them from their own houses and kept them in other houses, i.a. in Lapithos and Karavas (6).

264. Of the persons interviewed in refugee camps Refugee C stated that she had been detained with other co-villagers for 13 days in an English house at Karmi in which she had earlier taken refuge and to which she had been returned a after a forcible excursion to Boghazi. She stated that the people in that house were not allowed to leave it, nor was access to them allowed to the Red Cross; they were under the absolute control of the Turks. There was a Turkish Cypriot guarding them, the Turks from Turkey would not allow him to do something for the alleviation of their situation (7). Refugee D who had been confined to the church of Voni said some old people were put in houses in Voni village (8).

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(1) Verbatim Record, p. 32.
(2) Verbatim Record, p. 33.
(3) Verbatim Record, p. 93.
(4) Verbatim Record, p. 95.
(5) Verbatim Record, p. 96.
(6) Addendum, Statements on pp. 90, 91, 93, 94.
(7) Addendum, pp. 7-8.
(8) Addendum, p. 10.

265. Some written statements of persons submitted by the applicant Government also refer to longer periods of confinement in private houses (1).

(c) Confinement to the Dome Hotel in Kyrenia and the village of Bellapais

266. In the first days of the Turkish military action which started on 20 July 1974 with a landing operation in the Kyrenia area, one of the main tourist regions of Cyprus, the Dome Hotel at Kyrenia was used as a refuge and assembly place of foreign tourists. While they were soon evacuated, the Hotel continued to be used as a shelter by many persons whom the UN documents described as being under United Nations "protective custody".

267. According to a UN report of 24 July 1974 they included a number of Greek Cypriot and Greek civilians plus a number of wounded National Guard soldiers (2). The number of Greek Cypriots in the Hotel was reported to be 500 on 26 July 1974 (3). The way in which they had come to the Hotel was described in a summary of developments published on 5 August. It stated that Greek Cypriots who had remained in Greek Cypriot towns and villages were brought by Turkish troops to several assembly points, including the Dome Hotel at Kyrenia and in the village Bellapais (4).

268. According to a UN report of 28 July 1974 UNFICYP tried to use its good services for bringing about arrangements that would have enabled Greek Cypriots "detained" at Kyrenia and Bellapais, as well as Turkish Cypriots detained at Limassol and Larcana, to return to their homes. However, those attempts apparently failed in so far as the Dome Hotel was concerned (5). At Bellapais the Turkish authorities returned 100 Greek Cypriot prisoners to the village and released them to their homes on 5 August 1974. The UN reported that these persons, together with several hundred Greek Cypriot civilians who had remained in the village, were able to move freely after UNFICYP patrolling had been resumed in the village by agreement with the Turkish military authorities (6).

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(1) E.g. Statements I, Nos 46, 51, 54; Statements II, Nos 7, 8, 11, 12.
(2) UN Doc. S/11353/Add. 6, para. 8.
(3) UN Doc. S/11353/Add. 8, para. 6.
(4) UN Doc. S/11353/Add. 15, para. 8 a. With regard to Bellapais it was originally reported that some 5,000 Greek Cypriots, among them 100 wounded, were under UN protective custody ((UN Docs S/11353/Add. 6, para. 8; Add. 7, para. 6 and Add. 8, para. 6). Their number had fallen to 2,000 on 30 July 1974 (UN Doc. S/11353/Add. 11, para. 3).
(5) UN Doc. S/11353/Add. 10, para. 6.
(6) UN Doc. S/11353/Add. 16, para. 8.

269. UNFICYP was gradually subjected to certain restrictions effecting its freedom of movement in the north of Cyprus. Thus it was reported on 30 July 1974 that the Turkish forces informed UNFICYP that any outside assistance intended for Bellapais and the Dome Hotel should be channelled for distribution through the Turkish army (1). On the first day of the second phase of the Turkish military action, 14 August 1974, the Turkish commander ordered the withdrawal of UNFICYP personnel from the Dome Hotel and Bellapais which had both been used as UN observation posts, and UNFICYP withdrew under protest. Only an ICRC observer remained in the Hotel (2). Although the UN "protective custody" had thus apparently come to an end the persons in the Hotel remained there. The progress report on the UN Operation in Cyprus covering the period December 1974 to June 1975 stated that of the 350 who were originally confined to the Dome Hotel, only 53 remained. Seven were permitted by the Turkish Cypriot authorities to return to their Kyrenia homes (3).

270. Of the witnesses heard by the Commission's Delegation, the main witness on conditions in the Dome Hotel was Dr. Charalambides, a physician and former Deputy Mayor of Kyrenia, who had himself been confined there until 5 April 1975. He stated (4) that after the Turkish invasion in July 1974 he first stayed in his house in Kyrenia, but when it became too dangerous to remain there he moved with his wife to the Dome Hotel on 23 July. When he arrived in the Hotel there were still some 800 foreigners there who were soon evacuated. Then many people started to take refuge in the Hotel, and some were brought by the UN and others by the Turkish army. After the evacuation of the foreigners there was a total of about 800 persons at the Hotel. They remained under the care of the United Nations for a month. After the second phase of the Turkish military action the UN was obliged to leave, and Turkish Cypriot policemen took over. The Turkish forces remained outside and were not allowed to come into the hotel.

271. As a physician the witness was allowed to leave the hotel escorted by a Turkish Cypriot policeman in order to see his patients. Initially other persons could also leave the hotel with escorts, e.g. in order to go to the bank, or the market, but more and more restrictions were introduced after Christmas 1974. The Turkish Cypriot police inspector who guarded the hotel entrance got orders from the Turkish commander, to whom he reported whenever a problem arose.

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(1) UN Doc. S/11353/Add. 11, para. 5.
(2) UN Doc. S/11353/Add. 25, paras. 10, 12, 18.
(3) UN Doc. S/11717, para. 40.
(4) Verbatim Record, pp. 72-86.

The commander himself visited the hotel three times. The persons confined in the hotel were initially not allowed to walk on the verandahs, so they asked for his permission to go to the hotel's swimming pool. This was granted, and in September they were also allowed to do a walk outside the hotel to Kyrenia harbour twice a week, and to go to a nearby church on Sundays between 9.00 and 11.00 a.m. However, in December 1974 these outings were cancelled without any explanation. The witness asked for a laissez-passer to the police station, in order to be able to carry out his duties as a doctor more easily, but without success. He could, however, occasionally return to his house with an escort in order to pick up surgical instruments or medicaments. Several times the persons confined to the Dome Hotel were promised that they would be allowed to return to their homes; Mr. Denktash who came to the hotel with Mr. Clerides also promised this. The conditions in the hotel were better than in other areas of northern Cyprus. In the beginning there was little room since the hotel's capacity was 600, and there were 800 persons. There were electricity cuts and, later, food rationing. When the witness left in April 1975, there were only 75 persons left in the hotel.

272. Other witnesses, who referred to the conditions in the Dome Hotel as "detention", were:

- Witness Soulioti, who stated that before "real concentration areas" were established during the second phase of the Turkish military operation "a few people were sort of mopped up from the villages west of Kyrenia in the first phase and put in the Dome Hotel"(1). The Red Crescent Representative, Dr. Pamir, promised the "detainees" in the Dome Hotel in September 1974 that they would soon be allowed to return to their homes(2). This promise was not kept although they were permitted to take a walk from time to time and to go to church; these privileges were later withdrawn (3);

- Witness Stylianou, who stated that on 4 August 1975 there were still 47 persons detained in the Dome Hotel (4).

- Witness Iacovou, who stated (5) that the people in Kyrenia took refuge in the Dome Hotel because of the atrocities committed in the first days of the Turkish military action. They later wanted to go back to their homes in Kyrenia, but in spite of promises given by the Turkish leadership, they were not allowed to do so. Only about five families were permitted to return to their homes; the remainder were transferred to the area controlled by the applicant Government (6).

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(1) Verbatim Record, p. 7.
(2) Verbatim Record, p. 13.
(3) Verbatim Record p. 15.
(4) Verbatim Record, p. 32.
(5) Verbatim Record p. 169.
(6) Cf. Chapter 1 above, paras. 148-149.

273. Only a few of the written statements submitted by the applicant Government refer to the conditions in the Dome Hotel.

- The author of one of these statements (1), a women identified as owner of a supermarket in Kyrenia, said that on 23 July 1974 the Austrian UNCIVPOL (civilian police element of UNFICYP) advised all Greek Cypriots to move to the Dome Hotel which was guarded by Austrian and Canadian members of the peace-keeping force. Each time Turkish soldiers from Turkey or Turkish Cypriots visited the hotel premises they were escorted by members of UNFICYP. On the other hand, UNFICYP and ICRC delegations and foreign journalists who came to the hotel had to be escorted by Turkish military or police personnel who were present at every contact the persons confined to the hotel had with foreigners. The Turks also prevented the free movement of UNFICYP personnel within the hotel premises. One day they transferred all men between 18 and 58 to Saray prison in Nicosia for interrogation, without any UN escort; only some elderly persons and British citizens were returned to the Dome Hotel after six days. In mid August the Turkish army and police officers gave a three-hour warning to UNFICYP to leave the hotel and hand it over to them, otherwise they would be shot at. UNFICYP left after having informed the persons in the hotel that they had received assurances that nothing would happen to them. Later Turkish soldiers permitted members of the Red Cross to stay with the people in the hotel. Turkish soldiers were free to enter the hotel and occasionally brought with them journalists from Turkey to hold interviews. The persons confined to the hotel formed a committee which dealt with all their problems. Before the author of the statement was released together with her family on 13 September 1974, they were told by Turkish soldiers that they would be exchanged with Turkish prisoners.

- The author of another statement (2), identified as a 23 year-old woman, stated that she had gone to the Dome Hotel together with her family on 23 July 1974, following the occupation of Kyrenia by the Turkish army on the preceding day. The entrance and surroundings of the hotel were guarded by Turkish policemen and Turkish military policemen. On the following days Turkish soldiers brought to the hotel Greek inhabitants of Kyrenia and surrounding villages (Ayios Georgios, Trimithi, Karmi, Fterikha, Karavas), altogether about 400 persons. Early in October persons confined to the hotel were given permission to go to their homes in order to inspect them, under escort. On 6 October after being granted permission, they were accompanied by Turks to the church of K. Kyrenia in order to clean it.

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(1) Statements I, No 39.
(2) Statements I, No 67.

IV. Evaluation of evidence obtained

274. The Commission considers that the evidence obtained establishes that Greek Cypriots in the north of Cyprus were confined for considerable periods of time at certain locations, including detention centres, private houses, and the Dome Hotel in Kyrenia.

275. As regards detention centres, it has been established that such centres existed in schools and churches at Voni, Gypsou and Morphou. There is also evidence concerning the existence of similar centres at Marathovouno and Vitsada but the Commission is unable, on the basis of the material before it, fully to determine the conditions which existed there. It appears from written and oral statements that the detention centres in these two villages were evacuated to Gypsou before the intercommunal arrangements for the transfer to the south of Cyprus of persons subjected to such measures of confinement were concluded in November 1974. This would explain why the relevant intercommunal agreement mentions only Gypsou and Voni. The evidence also shows that the centre at Morphou was not fully established until a later stage.

276. The Commission finds it proved that more than 2,000 Greek Cypriots, mainly civilians, including old people and children, were transferred to the centres, and that their freedom of movement was consequently restricted to the respective premises where they were kept under guard in miserable conditions. Apart from the written and oral evidence of persons who stated that they had themselves been kept in one or several of the centres, this was also confirmed by independent sources such as the statements of UNHCR and ICRC officials at an intercommunal meeting, the record of which the Commission accepts as correct, and in the report of a journalist describing the conditions in Gypsou. Although the relevant UN documents do not contain details about conditions in the centres, they do not in any way contradict the above findings but rather tend to confirm them. The period of confinement in these centres was in most cases two to three months.

277. As regards confinement in private houses the Commission considers that a distinction should be made between houses used in connection with detention centres, and other houses.

(a) There is evidence showing that at least at Gypsou and Morphou some private residences were used as annexes of the detention centres established there. The Greek Cypriots confined to these houses lived in the same, if not worse, conditions as those in the school and church, and were guarded together with them.

(b) There is also evidence that elsewhere, too, e.g. in Lapithos, Greek Cypriots were confined to private houses either their own ones or houses to which they were transferred. There are strong indications that conditions in these houses were sometimes similar to

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those in the detention centres, but the Commission has been unable, on the basis of the evidence before it, to establish a clear picture of all the relevant circumstances, e.g. as to the duration of the confinement, the number of persons concerned, whether they were continuously guarded, etc.

278. Finally, as regards the confinement of Greek Cypriots in the Dome Hotel the Commission finds that it developed from an original situation of UN protective custody, such as it also existed in the village of Bellapais. Although it has been established to the Commission's satisfaction that some Greek Cypriots from Kyrenia and the surrounding villages were brought to the Hotel by Turkish troops while it was still under UN control, it is not clear whether this happened against their will. In addition to them there were no doubt many, including the Commission's main witness in this matter, Dr Charalambides, who went to the Hotel of their own volition, some on the advice of UNFICYP, in order to take refuge there. However, the Commission finds it established that the persons in the Hotel were soon subjected to restrictions of their freedom of movement. They could only leave the Hotel under escort after having obtained permission, which was given on a restrictive basis for reasons such as shopping, visits to church, walks for exercise twice a week, and apparently once early in October 1974 in order to inspect their houses. With this exception the persons confined to the Hotel were not allowed to go to their houses. The arrangements made for Dr Charalambides, who was permitted to fetch medicaments and surgical instruments from his house, and to visit patients in Kyrenia-town, were apparently of a special character and cannot be considered as representative. The Commission further finds it established that, after the withdrawal of UNFICYP, the Dome Hotel was guarded by Turkish Cypriots under the orders of a Turkish Commander, who occasionally came to the Hotel for inspection. The practice concerning permission to leave the Hotel became gradually more restrictive, especially after Christmas 1974. The majority of persons confined to the Hotel were apparently transferred to the south of Cyprus during the first half of 1975.

V. Responsibility of Turkey under the Convention

279. It has been established that many of the persons confined to detention centres or the Dome Hotel were brought there by the Turkish army (1).

280. It has also been established that the detention centres were under the command of Turkish army officers, to whom the guarding personnel, including Turkish soldiers and Turkish Cypriot policemen, reported if important issues had to be decided.

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(1) See paras 247, 250, 267, 270, 272 above.
(2) Cf paras 251, 254, 255, 257 (the isolated statement to the contrary of Refugee B is only hearsay evidence and does not in principle invalidate the other testimonies obtained, which referred to other centres and other periods of time).

281. A similar situation existed at the Dome Hotel after 14 August 1974 when UNFICYP was forced to withdraw and the full control passed to the Turkish military authorities (1). However, the Commission has been unable, on the basis of the evidence before it, fully to establish the extent of Turkish control with regard to the Hotel before that date (2).

282. It follows that the persons confined in the detention centres, and those confined in the Dome Hotel after 14 August 1974, were under the actual control of the Turkish army. Turkey thus exercised jurisdiction, within the meaning of Art. 1 of the Convention as interpreted in the Commission's decision on admissibility, in respect of those persons and their confinement must therefore be imputed to Turkey under the Convention.

283. As regards confinement to private houses, the Commission finds that the circumstances in private residences attached to detention centres were the same as in these centres and the confinement of Greek Cypriots to these houses must therefore equally be imputed to Turkey because these persons were under the command of Turkish army officers and guarded with the assistance of Turkish soldiers (3).

284. On the other hand, the Commission has not been able fully to establish the circumstances of confinement to other, isolated private houses. However, there are strong indications that these premises, too, were often under the control of the Turkish army (4).

VI. Conclusions

285. The Commission, by 13 votes against one, considers that the confinement of more than two thousand Greek Cypriots to detention centres established in schools and churches at Voni, Gypsou and Morphou, which is imputable to Turkey, amounted to a deprivation of liberty within the meaning of Art. 5 (1) of the Convention. The confinement to these centres was not ordered in accordance with any procedure prescribed by law, and did not serve any of the purposes justifying detention which are mentioned in sub-paragraphs (a) to (f) of Art. 5 para. (1). It follows that the confinement of Greek Cypriots in the above detention centres was not in confirmity with Art. 5 (1) of the Convention.

286. The Commission further considers, by 13 votes against one, that the confinement of Greek Cypriots to private houses in Gypsou and Morphou, where they were kept under similar circumstances as in the detention centres, was equally a deprivation of liberty contrary to Art. 5 (1) of the Convention, imputable to Turkey.

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(1) Cf in particular paras 270, 271 and 273 above.
(2) Cf paras 266-269 above.
(3) Cf paras 260 and 262 above.
(4) Cf paras 261, 263 and 264 above.

287. Finally, as regards the Dome Hotel, the Commission is not called upon to examine the compatibility of the initial "protective custody" of the United Nations with the provisions of Art. 5 of the Convention. Since it has not been fully determined to what extent the Turkish authorities controlled the Hotel prior to the withdrawal of UNFICYP the Commission proposes to limit its findings to the period after 14 August 1974 when the full responsibility for the Hotel passed to the Turkish authorities.

288. The confinement, after this date, of Greek Cypriots to the premises of the Hotel, with no possibility of leaving without permission and without being escorted, was in the Commission's opinion a deprivation of liberty within the meaning of Art. 5 (1) of the Convention. This deprivation of liberty was not ordered in accordance with any procedure prescribed by law, nor did it serve any of the purposes enumerated in sub-paragraphs (a) to (f) of Art. 5 (1) as justifying detention.

The Commission concludes, by ten votes against two with two abstentions, that the confinement of Greek Cypriots to the Kyrenia Dome Hotel after 14 August 1974, imputable to Turkey, was not in conformity with Art. 5 (1) of the Convention.

289. The question whether any of the above deprivations of liberty may have been justified under Art. 15 (1) of the Convention is reserved for consideration in Part III of this Report.

C. "Prisoners and detainees"

I. Submissions of the Parties

(1) Applicant Government

290. The applicant Government submitted that the Turkish armed forces arrested and detained hundreds of Greek Cypriots arbitrarily and with no lawful authority both in Cyprus and in Turkey (1).

291. The Government stated that on entering any inhabited area the Turkish forces at once arrested the Greek Cypriot population. Men were usually separated and detained apart from old people, women and children (2).

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(1) Application I, para. 3.
(2) Particulars I, paras 20 G and 22 A.

Some male Greek Cypriots were kept as prisoners in places like Saray Prison and Pavlides Garage in the Turkish part of Nicosia. Most of them were subsequently deported to Turkey where they were detained in prisons in Adana, Amasia and Atiama. Those deported were mostly civilians of all ages between 16 and 70 (1).

Turkey did not give complete lists of these detainees. A total of 2,460, of whom more than 2,000 had been deported to Turkey, were gradually released as a result of relevant arrangements (2). The last group of prisoners from Turkey was released by the end of October 1974 (3).

292. The applicant Government further stated that there was evidence that a number of missing persons were among those who had been expatriated, and they invited the Commission to investigate whether they were still detained in Turkey (4).

(2) Respondent Government

293. The respondent Government who, for the reasons stated above (5), did not take part in the proceedings on the merits, have not made any submissions with regard to the above allegations. The Permanent Representative of Turkey at the meeting on 6 October 1975 (6) contested the testimony of Mr Pirkettis concerning the witness' detention in Turkey.

II. Relevant Article of the Convention

294. The Commission considers that the above allegations concerning the arrest and detention of male Greek Cypriots as "prisoners and detainees" raise issues under Art. 5 of the Convention (7). The question whether the conditions of this detention were contrary to Art. 3 of the Convention will be dealt with separately (8).

III. Evidence obtained

295. It has already been mentioned that the so-called "enclaved Greek Cypriots" and persons confined to "detention centres" in the north of Cyprus were not referred to as "prisoners and detainees" in the relevant intercommunal agreements and UN documents (9). The Commission has now to

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(1) Particulars I, paras 20 G and I.
(2) Particulars I, para. 20 I.
(3) Particulars II, para. 12 K.
(4) Ibid.
(5) See Part I, para. 23.
(6) See Part I, para. 40 and Appendix XIV..
(7) For the text of Art 5 see para. 220 above.
(8) See Chapter 4 B below.
(9) Cf paras 221-223 and 245 above.

examine the situation of those persons who have been officially recognised as "prisoners and detainees" by both Parties to the present applications. In this respect the Commission observes that such "prisoners and detainees" apparently existed on both sides in comparable numbers. In the present case, however, the Commission is only concerned with Greek Cypriot "prisoners and detainees" whose detention is imputable to Turkey. It notes that 2,487 Greek Cypriot "prisoners and detainees" were released by October 1974 on the basis of several intercommunal agreements (1).

296. The intercommunal agreements and UN documents referring to them are exclusively concerned with the release and transfer of "prisoners and detainees" to their respective sides. They have been described above in connection with the displacement of the persons concerned (2).

On the whole the said documents do not give details as to the circumstances in which these persons were taken prisoners. They do, however, indicate that they included i.a. civilians (3), persons under 18 and over 55 years of age, as well as religious, medical and paramedical personnel (4), and that a number of these "prisoners and detainees" were deported to Turkey (5).

297. Other UN documents referring to prisoners and detainees are:

- a report of 31 July 1974 according to which an agreement was reached on 30 July between UNFICYP and ICRC on their respective fields of activity; ICRC assumed i.a. responsibility for providing relief and taking care of "prisoners" (6);

- a report of 5 August 1974 stating that most of the male population of the Greek Cypriot villages in the areas then controlled by Turkish forces were taken prisoner and escorted by Turkish troops into the area of Boghazi-Geunyeli -Orta Keuy (7);

- a report of 6 August 1974 according to which ICRC visited 127 Greek Cypriot men who had been brought from Kyrenia to Saray police station (8);

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(1) Cf UN Doc. S/11568, para. 51.
(2) See Chapter 1 above, in particular paras 135-149.
(3) Cf the Geneva Tripartite Declaration of 30 July 1974, and the Turkish note to UNFICYP of 4 August 1974, quoted in Chapter 1 above, paras 135-136.
(4) Cf Chapter 1 above, paras 138-139.
(5) Cf Chapter 1 above, paras 150 et seq.
(6) UN Doc. S/11353/Add. 12, para. 5.
(7) UN Doc. S/11353/Add. 15, para. 8 b.
(8) UN Doc. S/11353/Add. 16, para. 8.

- a report of 15 August 1974 according to which Turkish tanks had reached the old city of Famagusta where some National Guard soldiers were taken prisoner; the Turkish Commander then asked National Guard troops in the Famagusta area to surrender, and the National Guard asked for terms of surrender (1);

- a report of 10 September 1974 according to which 500 Greek Cypriots were captured on 26 August by Turkish forces in the Karpasia area; the inhabitants of this area were hampered in harvesting the tobacco crop since most of the young men were detained (2).

298. One of the witnesses heard by the Commission's Delegation, Mr Perkettis, stated that he was taken prisoner and deported to Turkey (3). He had been on holiday in the north with his family, and sought refuge in a house at Trimithi when the Turkish army arrived there. The people in Trimithi were then gathered in the school and church, and twice taken for forcible excursions to Boghazi on 26 and 29 July 1974. The second time all the men between 15 and 70 including the witness were separated there from their families and put in a sheep-fold. Opposite there was a pen in which Greek Cypriot soldiers were kept who had been taken prisoner.before. Some said they had been there for nine days already. The next day the prisoners were fettered and blindfolded and transported to a ship which took them to Mersin in Turkey. There were also Greek Cypriot soldiers among the prisoners on the ship who were separated from other prisoners by barbed wire. From Mersin the witness was transported with other prisoners to Adana, and on 26 August transferred to Amasia. He was released to the south of Cyprus on 26 October 1974.

The witness mentioned details of some other prisoners who were detained together with him. One was a prison warder, another one a surgeon for the police force in Cyprus (4). He also mentioned the father-in-law of a policeman who was arrested together with him in Trimithi (5). He thought only about 400 out of the 2,000 persons expatriated were soldiers (6). Soldiers and civilians were not separated during their detention in prisons in Turkey (7).

299. Other witnesses who spoke about prisoners and detainees were:

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(1) UN Doc. S/11353/Add. 27, paras 4 and 5.
(2) UN Doc. S/11468/Add. 1, para. 8.
(3) Verbatim Record, pp. 40-57.
(4) Cf Verbatim Record, p. 49.
(5) Verbatim Record, p. 50.
(6) Verbatim Record, p. 52.
(7) Verbatim Record, p. 53

- Mrs Soulioti. She referred to lists of "prisoners-of-war" given to the Red Cross, and stated that the two places where such prisoners were held in Cyprus were Saray prison and Pavlides Garage in Nicosia (1). She said she was present herself when the prisoners-of-war were released, most of them had been taken to Adana and were released from there. Of the 2,526 prisoners-of-war all, with the exception of 146, had been taken to Turkey. They were not all members of the armed forces, there were priests and civilians among them who were taken prisoner in their respective villages, where they were separated from their families (2).

- Dr Hadjikakou. He stated that on entering Greek Cypriot villages the Turkish troops used to separate the men and take them either to "Pavlides Garage concentration camp" or Saray prison in Nicosia, where they were kept for periods of time running from several days to some months. Many were shipped to Turkey. He had heard the same story from about thirty to forty people, constituents and patients of his (3). The witness also submitted a paper prepared by him containing details of individual cases (4).

- Witness Azinas. He stated that some directors of co-operatives were taken to Adana, among them the manager of the Tobacco-Growers' Co-operative who was replaced by a Turkish Cypriot (5).

300. Persons interviewed by Delegates of the Commission in refugee camps also mentioned persons taken prisoner:

- Refugee A from Ayios Georgios stated that she saw two soldiers being taken prisoner by Turkish soldiers in the street of her village (6). The Turkish soldiers searched her house and arrested her son and two other soldiers. Nothing was heard of them after (7). Her other son was a soldier serving at Koutsovendis during the second phase of the Turkish military operation. He was last seen at Pavlides Garage (8).

- Refugee C from Karmi stated that in her village the Turks separated all men and transported them to Turkey; her son was detained in Turkey (9).

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(1) Verbatim Record, p. 18.
(2) Verbatim Record, pp. 22-23.
(3) Verbatim Record, p. 108.
(4) Addendum, pp. 38-44.
(5) Verbatim Record, pp. 224 and 227.
(6) Addendum, p. 1.
(7) Addendum, p. 2.
(8) Addendum, p. 3.
(9) Addendum, p. 7.

- Refugee E from Kythrea stated that he gave civilian clothes to six Greek soldiers who came to his house. Later he identified them at an identification parade held by a Turkish army officer ("three stars captain"), and they were arrested (1).

- Refugee H, a boy aged 14, said that the people in his village were gathered in the school on 15 August 1974 when Turkish soldiers came and took them outside the village where they were searched. All young people from 18 to 40 were arrested and taken to Saray police station in Nicosia (2).

301. Many written statements submitted by the applicant Government were by persons who said they were taken prisoner, or saw the arrest of other persons (3). Several stated that they were soldiers of the National Guard and were taken to the mainland of Turkey (4), some that they were civilians and taken to Turkey, among them a priest and the head of a village commission (5). One stated that he was a village prefect and that he was arrested by Turkish Cypriots and subsequently detained in Saray prison and Pavlides Garage (6).

Seven further statements allegedly made on their release by Greek Cypriot men who had been deported to and detained in Turkey were submitted by the applicant Government on 13 May 1975 (7). The Government also submitted a file containing "a selection of facts and other evidence relating to undeclared Greek-Cypriot prisoners-of-war and missing persons", prepared by the "Pancyprian Committee of Parents and Relatives of Undeclared Prisoners and Missing Persons" in August 1975 (8).

302. Finally, the Commission's Delegation saw news films of the Cyprus Broadcasting Corporation showing the arrival of released prisoners-of-war (9) and an interview with a former prisoner-of-war (10).

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(1) Addendum, p. 11.
(2) Addendum, p. 13.
(3) Statements I, Nos 3, 33, 35, 36, 37, 44, 55, 63, 79, 83, 86, 88, 90, 92, 93, 96. Statements II, Nos 1, 12, 16 (detained in Acrades camp).
(4) Statements I, Nos 3, 35, 36, 37, 79, 93.
(5) E.g. Statements I, Nos 86, 88, 92 (priest), 96 (head of village commission).
(6) Statements I, No 33.
(7) For details, see Chapter 4 B below, para. 389.
(8) For details, see Chapter 3 below, para. 330.
(9) Addendum, p. 99, Nos 2 and 7.
(10) Ibid., No 6.

IV. Evaluation of the evidence obtained

303. The Commission finds it established that more than 2,400 Greek Cypriots were arrested during the first and second phase of the Turkish military action and kept as prisoners until their release on the basis of intercommunal agreements concluded in September 1974 and implemented by the end of October 1974. The Commission finds that more than 2,000 of these prisoners were deported to Turkey where they were kept in prisons at Adana and Amasia. The remainder, some 145 persons as stated by witness Soulioti, were kept in two locations in the Turkish sector of Nicosia, Saray prison and Pavlides Garage.

304. The Commission finds that the above prisoners included a substantial number of National Guard soldiers, but that these were not all arrested in the course of actual fighting. There are, however, indications that all these soldiers were subsequently deported to Turkey.

305. The Commission also finds that many of the prisoners were civilians, who were either detained in the north of Cyprus or deported to Turkey, including the Commission's main witness on this matter, Mr Pirkettis.

306. The Commission has not been able to find out whether undeclared Greek Cypriot prisoners are still in Turkish custody, as alleged by the applicant Government. The problem of missing persons will be dealt with separately (1).

V. Responsibility of Turkey under the Convention

307. The Greek Cypriots deported to and detained in prison in Turkey were clearly under the actual control of the Turkish authorities, and thus under the jurisdiction of Turkey, within the meaning of Art. 1 of the Convention. Their detention must therefore be imputed to Turkey under the Convention.

308. The Commission has not found sufficient evidence showing that the two locations where prisoners were kept in the north of Cyprus, namely Saray prison and Pavlides Garage, were under the control of the Turkish army, or guarded by Turkish soldiers. The Commission is consequently unable, on the basis of the evidence before it, to establish whether the detention of Greek Cypriots in those locations is imputable to Turkey.

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(1) See Chapter 3 below, paras 316, 330-342 and 351.

VI. Conclusions

309. The Commission considers that the detention of Greek Cypriot military personnel in Turkey, which is clearly imputable to Turkey under the Convention, constituted a deprivation of liberty within the meaning of Art. 5 (1) of the Convention. Since it did not serve any of the purposes enumerated in sub-paragraphs (a) to (f) of this provision, the Commission concludes, by thirteen votes against one, that it was not in conformity with Art. 5 para. (1) of the Convention.

310. As regards the detention of Greek Cypriot civilians, the Commission considers that, in so far as it occurred in Turkey and therefore is imputable to Turkey, it equally constituted a deprivation of liberty within the meaning of Art. 5 (1) of the Convention not serving any of the purposes mentioned in sub-paragraphs (a) to (f) of this provision. The Commission therefore concludes, by thirteen votes against one, that the detention of civilians in Turkey was equally not in conformity with Art. 5, para. (1) of the Convention.

311. However, in view of its finding that it was unable to establish the imputability to Turkey under the Convention of the detention of 146 Greek Cypriots at Saray prison and Pavlides Garage in the Turkish sector of Nicosia (1), the Commission considers, by ten votes against two, with two abstentions, that it is not called upon to express an opinion as to the conformity with Art. 5 of the Convention of the detention of Greek Cypriot prisoners in the north of Cyprus.

312. The question whether any of the above deprivations of liberty, in particular the detention of military personnel as prisoners-of-war, were justified under Art. 15 of the Convention is reserved for consideration in Part III of this Report.

313. The Commission has taken account of the fact that both Cyprus and Turkey are Parties to the (Third) Geneva Convention of 12 August 1949, relative to the treatment of prisoners-of-war, and that, in connection with the events in the summer of 1974, Turkey in particular assured the International Committee of the Red Cross (ICRC) of its intention to apply the Geneva Conventions and its willingness to grant all necessary facilities for humanitarian action (2). In fact, ICRC delegates made regular visits to soldiers and civilians who had been granted prisoner-of-war status by the authorities on either side (3). They included, before the resumption of

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(1) See para. 308 above.
(2) Cf International Review of the Red Cross, 14 (1974), p. 456.
(3) Ibid., p. 605.

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hostilities on 14 August 1974, 385 Greek Cypriots in Adana, who were visited by two ICRC delegates, one of them a doctor, 63 Greek Cypriots in Saray prison in the Turkish part of Nicosia and 3,268 Turkish Cypriots in camps in Cyprus (1).

After fighting in August had come to an end the ICRC obtained permission to visit Greek Cypriot prisoners first in transit camps in Cyprus and then in three camps in Turkey, and several thousand Turkish Cypriot prisoners in four camps in the south of Cyprus (2).

Having regard to the above, the Commission has not found it necessary to examine the question of a breach of Art. 5 of the European Convention on Human Rights with regard to persons accorded the status of prisoners of war.

D. Final observation

314. The Commission, by seven votes against six with three abstentions, decided not to consider as a separate issue the effect of detention on the exercise of the right to respect for one's private and family life and home (Art. 8 of the Convention).

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(1) Cf International Review of the Red Cross, 14 (1974), pp. 456 and 605.
(2) Ibid., p. 605.

Chapter 3 - Deprivation of life

A. Submissions of the Parties

I. Applicant Government

315. The applicant Government submitted that mass killings of civilians who were unconnected with any war activities was a systematic course of action followed by the Turkish army: not only unarmed soldiers, who had surrendered, but also civilians, including children between 6 months and eleven years, women and old men up to the age of 90, even paralysed cripples, mentally retarded and blind people, had been killed. Hundreds of killings of Greek Cypriots by Turkish forces had been reported by eye-witnesses (1). The acts complained of included killings of persons who had attempted to visit areas under Turkish military control in order to collect their belongings from their homes (2).

316. The Government also feared that a large proportion of the Greek Cypriots who had last been seen in the Turkish occupied area and were still unaccounted for (at least 3,000, a considerable number being civilians) were victims of such killings (3). There was evidence showing that such persons had fallen into the hands of the Turkish army but the Turkish authorities denied any knowledge about them (4). The category of missing persons assumed to have been killed by Turkish forces included persons arrested by such forces when going near to the Turkish controlled area or strayed into it, insofar as no particulars as to their fate had subsequently been given by the Turkish authorities (5).

II. Respondent Government

317. The respondent Government, who for the reasons stated above (6) did not participate in the proceedings on the merits, have not made any statement with regard to the above allegations.

B. Relevant Article of the Convention

318. The facts alleged by the applicant Government raise issues under Art. 2 of the Convention which states as follows:

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(1) Particulars I, p. 8.
(2) Particulars II p. 4.
(3) Particulars I p. 8.
(4) Particulars II, p. 5.
(5) Ibid. p. 4.
(6) See Part I para. 23.

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

C. Evidence obtained

I. Evidence of killings

319. The Commission has already stated (1) that it had to restrict its investigation of the violations alleged in the present case. As regards evidence of killings the Delegates, during the period fixed for the hearing of witnesses in Cyprus, heard eye-witnesses only concerning the incident in the Elia neighbourhood. Evidence on this killing of twelve male civilians in the presence of the families of some of them on 21 July 1974 was given by Mr. and Mrs. Efthymiou (2) and Mrs. Kyprianou (3).

320. Mrs. Kyprianou stated that in this killing she lost her husband, her father, two brothers-in-law and an uncle. She and a group of co-villagers were made prisoners by Turkish soldiers when they tried to reach the mountains fleeing from bombardment. All arrested men were civilians wearing civilian clothes. The Turkish soldiers told them that they were to wait for the orders of their officer who would decide on their fate. When the officer arrived he seemed to be in an angry mood and ordered the soldiers to lie down, which they did, loading their rifles. Another soldier, whom she described as a "good man", intervened and the Turkish soldiers discussed for half an hour. Then they separated the men from the women and, in front of the women, they started shooting at the men killing twelve of them. Some of the men were holding children while being shot and three of these children were wounded (4).

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(1) See Part I, para 77
(2) Verbatim Record, pp. 203-222. The Efthymiou couple are the authors of Statements I, Nos. 60 and 82.
(3) Verbatim Record, p. 197.
(4) Verbatim Record, pp. 198-201.

321. Mrs. Kyprianou's statement was fully corroborated by the evidence given by Mr. and Mrs. Efthymiou, Mr. Efthymiou having been the only man who escaped the shooting of the group of civilians. They stated that the daughter of the Efthymiou couple was wounded when Mr. Efthymiou's father, who was holding the child, was shot (1). This incident is also described in written statements submitted as evidence (2).

322. Two further cases of group killings are reported in two written statements of persons who affirm to have been eye-witnesses and whose names and addresses can be disclosed by the applicant Government. According to the first statement five men (two shepherds aged 60 and 70 respectively, two masons aged 20 and 60, and one plumber aged 19) were killed by Turks at Trimitha (3). According to the second statement 30 Greek Cypriot soldiers, who were held as prisoners at Palekythron, were killed by Turkish soldiers (4).

323. In addition witness Stylianou, Chairman of the Pancyprian Committee of Enclaved Persons, spoke of mass killings in Palekythro and indicated names and addresses of persons who, according to him, had been eye-witnesses (5).

Two of these incidents concerned executions of soldiers of the National Guard who had surrended to the advancing Turkish troops. The incidents were reported to the witness by soldiers who escaped the shooting. In each case 30 - 40 soldiers were shot. In the second case the soldiers who had surrendered were transferred to the kilns of the village where they were shot dead and burnt in order not to leave details of what had happened.

Another incident reported by Mr. Stylianou was the killing of seventeen members of two neighbouring families including ten women and five children aged between two and nine years. Mr. Stylianou also submitted a document which he identified as the English translation of a written statement made by a boy of sixteen years who survived this killing (6).

324. The last mentioned incident was also reported by Mrs. Soulioti (7) and further mentioned in handwritten notes which witness Dr. Hadjikakou submitted as part of his evidence (8).

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(1) Verbatim Record, p. 214.
(2) Statements I, Nos. 20, 59.
(3) Statements I, No. 5. See also No. 92.
(4) Statements I, No. 48. See also No. 110.
(5) Verbatim Record, pp. 29-31.
(6) Addendum, pp. 33-35.
(7) Verbatim Record, pp. 19-20.
(8) Addendum, p. 41.

Dr. Hadjikakou recorded cases of ill-treatment, rapes and killings related to him by patients who were either victims or eye-witnesses of the incidents and whose addresses could be obtained from him. As regards the above killing of seventeen civilians at Palekythron, Dr. Hadjikakou noted the name of a person who found the bodies in a yard.

325. Further killings described in Dr. Hadjikakou's notes were, inter alia,

- the execution by Turkish soldiers of eight civilians taken prisoners in the area of Prastio one day after the ceasefire on 16 August 1974 (1);

- the killing of several civilians by Turkish soldiers at Ashia (2);

- the killing by Turkish soldiers of five unarmed Greek Cypriot soldiers who had sought refuge in a house at Voni (3);

- the shooting of four women, one of whom survived pretending that she was dead (4).

326. Further killings were reported by witness Soulioti, President of the Cyprus Red Cross Society, and by Mr. Pirkettis, both of whom indicated names of persons stated to have been eye-witnesses (5).

327. Some of the persons interviewed in the refugee camps also reported killings:

- 'Witness' B stated that Turkish troops killed many in her village. "They went into the houses and killed people." (6)

- 'Witness' D of Palekythron said that about 18 persons of his village were shot, but he was not present when this happened (7).

- 'Witness' E said that Turks shot a shepherd (8).

- Witness F stated that Turks took her husband and her son-in-law to a river bank and shot them (9).

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(1) Addendum p. 39.
(2) Addendum, pp. 41-42.
(3) Addendum, p. 43.
(4) Addendum, p. 44.
(5) Verbatim Record, pp. 17-21 and p. 50.
(6) Addendum, p. 4.
(7) Addendum, p. 10.
(8) Addendum, p. 11.
(9) Addendum, p. 12.

328. The Commission finally notes that, apart from the written statements mentioned in para. 8 above, a great number of further written statements were submitted in support of both applications, describing killings of civilians in homes, streets or fields (1), as well as the killing of persons who were under arrest or in detention (2). Many of these statements were by alleged eye-witnesses (3), and most of the others from persons who described how they found relatives, friends, co-villagers killed. Eight statements described the killing of soldiers not in combat (4). Five statements referred to a mass grave found in Dhervnia (5).

329. All these written statements were taken by witness Hadjiloizou (6) or on his instructions by other police officers.

II. Evidence concerning missing persons

1. Information provided by Cypriot organisations dealing with problems of missing persons

330. The applicant Government submitted a file, prepared by the "Pancyprian Committee of Parents and Relatives of Undeclared Prisoners and Missing Persons" and dated August 1975 containing "a selection of facts and other evidence relating to undeclared Greek-Cypriot prisoners-of-war and missing persons". At Annex A of this file, the names and other details of 2,197 persons declared to be missing are given. The file also contains:

- data concerning missing students;
- photos of Greek Cypriots taken prisoner by the Turkish army. Some of the prisoners are identified and declared to be missing. Most of these photos were published in newspapers, including the "Special News Bulletin" issued by the Turkish Cypriot authorities on 4 September 1974 and the Turkish Magazine "Hayat" of 19 September 1974;
- a list of "persons who spoke from 'Bayrak' (Turkish radio station) and (are) still missing";
- statements about the arrest, by Turkish soldiers and Turkish Cypriots, of persons declared to be missing.

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(1) Statements I, Nos. 1-4, 15, 16, 21, 32-38, 41, 43, 45, 54, 55, 58, 62, 71, 80, 86, 92, 96, 98, 99, 102-105, 111, 113, 119, 120 and Statements II, Nos. 10, 11, 13.
(2) Statements II, Nos. 9, 19.
(3) Statements I, Nos. 35, 40, 46, 49, 50, 56, 57, 59, 72, 86, 87, 91, 94, 122 and Statements II, Nos. 2, 4, 5, 7, 15.
(4) Statements I, Nos. 41, 45, 48, 64, 70, 80, 103, 119.
(5) Statements II, Nos. 6-10.
(6) Verbatim Record, pp. 58-71.

331. Mrs. Soulioti, Chairman of the Cyprus Red Cross Society, stated before the Commission's Delegation on 2 September 1975 that two thousand five hundred persons were reported missing. She was afraid that a majority of them had been killed, taking into account the reports on killings given to Red Cross officers on the telephone by persons who were in the Turkish-occupied area at the second phase of the Turkish military action (1).

332. Mr. Stylianou, Chairman of the Pancyprian Committee of Enclaved Persons, stated that his committee listed two thousand and some hundreds of cases of missing persons (2).

2. Proceedings in the United Nations

333. A report by the Secretary-General to the Security Council of the United Nations of 5 August 1974 (3) stated that UNFICYP had established a special office to deal with the problem of missing persons. About 800 persons, including both Greek Cypriots and Turkish Cypriots, had then been reported missing, some 300 missing persons had been located.

334. At the inter-communal talks in Vienna in 1975 both sides repeatedly affirmed that they were not holding any undeclared prisoners-of-war or other detainees and agreed mutually to extend full facilities for searches in response to information given by the other side (4).

335. On 9 December 1975 the United Nations General Assembly adopted Resolution 3450 (XXX) on missing persons in Cyprus (5).

336. It appears from the Report of the Third Committee (6) that the draft of the above resolution, introduced by the representative of Cyprus on 12 November 1975, contained the following phrase in the third preambular paragraph:

> "Gravely concerned about the fate of over 2,000 Cypriots who are missing as a result of armed conflict in Cyprus," (7)

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(1) Verbatim Record p. 17.
(2) Verbatim Record p. 31.
(3) S/11353/Add. 15 (at p. 3, para. 9).
(4) U.N. Security Council Doc. S/11684, Annex (Press Communiqué of 3 May 1975), and Doc. S/11789, Annex (Press communiqué of 2 August 1975).
(5) Reproduced at Appendix XI.
(6) Doc. A/10284/Add. 1.
(7) Loc. cit. p. 17.

337. The representative of Turkey, on 14 November 1974, proposed that this paragraph should read as follows (1):

> "Deeply concerned about the fate of missing persons as a result of violence and conflict in Cyprus";

The representative of Cyprus, at the same meeting, revised his draft and proposed to say:

> "Gravely concerned about the fate of a considerable number of Cypriots who are missing as a result of armed conflict in Cyprus;" (2)

338. On 19 November 1975 the Committee rejected the Turkish amendment by 26 votes against 20, with 75 abstentions, and adopted the draft resolution, in its revised form, by 38 votes against one (Turkey) and with 21 abstentions (3).

3. Other evidence

339. Several of the refugees heard by delegates stated that relatives or co-villagers were missing (4).

340. Dr. Hadjikakou, in his handwritten notes, mentioned reports concerning cases of persons who were taken away by Turks and had not been heard of since (5). Inter alia, some villagers of Ashia, who were ordered to bury co-villagers outside the village, never returned (6).

341. Witness Pirkettis stated that when he left the detention camp in Amasya/Turkey about 20 people were held back but he thought they were released afterwards (7).

342. Witnesses Soulioti, Hadjiloizou, Dr. Hadjikakou and Anastasiou all said that due to the lack of co-operation by the Turkish side no investigation by Greek Cypriot organs, e.g. identification of dead bodies found in mass graves or elsewhere, had been possible in the Turkish-occupied area (8).

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(1) Loc. cit. p. 18.
(2) Ibid.
(3) For details of these votes see loc. cit. pp. 18-19 and 22-23.
(4) Addendum pp. 2, 4, 13.
(5) Addendum p. 42.
(6) Addendum, p. 42.
(7) Verbatim Record, p. 56.
(8) Verbatim Record, pp. 10, 65, 106, 152.

D. Evaluation of the evidence obtained

I. Evidence of killings

343. As regards the killing of twelve civilians near Elia (1), the Commission notes that the three eye-witnesses, although personally affected by the incident, gave evidence in a disciplined, calm and precise manner. Their statements were not contradictory and their elaborate and detailed account of the incident is credible in itself. The Commission is satisfied that their testimony was true and correct.

344. The testimony received from witness Stylianou on the killing of seventeen civilians at Palekythro (2) is corroborated by the evidence given by Dr. Hadjikakou and by a person interviewed in a refugee camp (Witness D). The knowledge of Mr. Stylianou and Dr. Hadjikakou was based on hearsay but they proposed to indicate the names and addresses of eye-witnesses.

345. The refugees who gave evidence on killings had been chosen at random and had no time to prepare their statements. They all appeared to be honest and trustworthy and the Commission finds no reason to doubt the correctness of their statements.

346. The written statements submitted about other killings have for the reasons already stated (3) not been further investigated. However, together with the above evidence and that given by Mrs. Soulioti, they constitute strong indications of killings committed on a substantial scale.

II. Evidence on missing persons

347. The evidence before the Commission (4) does not allow a definite finding with regard to the fate of Greek Cypriots declared to be missing. This is partly due to the fact that the Commission's Delegation was refused access to the northern part of Cyprus and to places in Turkey where Greek Cypriot prisoners were or had been detained.

348. In the present Report the Commission is only concerned with the fate of persons declared to be missing as from the beginning of the military action of Turkey on 20 July 1974. It is not concerned with any person missing due to the coup d'état which on 15 July 1974 preceded the above action.

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(1) See paras. 319-321 above.
(2) See para. 323 above.
(3) See paras. 77 and 319 above.
(4) See paras. 330-342 above.

349. It appears, however, from the evidence that:

- it is widely accepted that "a considerable number of Cypriots" are still "missing as a result of armed conflict in Cyprus" (1); i.e. between Turkey and Cyprus;

- a number of persons declared to be missing have been identified as Greek Cypriots taken prisoner by the Turkish army (2).

E. Responsibility of Turkey under the Convention

I. Killings

350. The evidence shows that killings were committed near Elia by Turkish soldiers acting under the order of an officer (3).

It further appears that the victims were, at the material time, under the "actual authority and responsibility" of Turkey, in the sense of the Commission's decision on the admissibility of the present applications (4). These killings are therefore imputable to Turkey under the Convention.

In the other cases (5) Turkish soldiers were also described as being responsible.

II. Missing persons

351. The Commission considers that there is a presumption of Turkish responsibility for the fate of persons shown to have been in Turkish custody. However, on the basis of the material before it, the Commission has been unable to ascertain whether, and under what circumstances, Greek Cypriot prisoners declared to be missing have been deprived of their life (6).

F. Conclusion

352. Art. 2 (1), second sentence of the Convention, provides that no one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Para. (2) of the Article contains further exceptions as regards deprivation of life in three categories of cases.

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(1) Cf. paras. 335-338 above.
(2) Cf. para. 330 above.
(3) See paras. 319-321 above.
(4) See Appendix I, para. 10 of The Law.
(5) See paras. 322-324 above.
(6) See Chapter 2, para. 306 above.

353. The Commission, by 14 votes against one, considers that the evidence before it constitutes very strong indications of violations of Art. 2 (1) of the Convention by Turkey in a substantial number of cases. The Commission points out that it restricted the taking of evidence to a hearing of a limited number of representative witnesses and that the Delegates, during the period fixed for the hearing of witnesses, heard eye-witnesses only concerning the incident of Elia. The evidence obtained for this incident establishes the killing of twelve civilians near Elia by Turkish soldiers commanded by an officer contrary to Art. 2 (1).

354. In view of the very detailed material before it on other killings alleged by the applicant Government, the Commission, by 14 votes against one, draws the conclusion from the whole evidence that killings happened on a larger scale than in Elia.

355. There is nothing to show that any of these deprivations of life were justified under paras. (1) or (2) of Art. 2.

356. The question whether any of the above acts were "deaths resulting from lawful acts of war", within the meaning of Art. 15 (2) of the Convention, is reserved for consideration in Part III of this Report.

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Chapter 4 - Ill-treatment

357. The applicant Government's complaints of ill-treatment will be considered under the following sub-headings:

- allegations of rape;
- conditions of detention;
- other forms of physical aggression of persons not in detention.

A. Allegations of rape

I. Submissions of the Parties

(1) Applicant Government

358. The applicant Government complained of "wholesale and repeated rapes of women of all ages from 12 to 71, sometimes to such an extent that the victims suffered haemorrhages or became mental wrecks. In some areas, enforced prostitution was practised, all women and girls of a village being collected and put into separate rooms in empty houses, where they were raped repeatedly by the Turkish troops." In certain cases "members of the same family were repeatedly raped, some of them in front of their own children. In other cases women were brutally raped in public. Rapes were on many occasions accompanied by brutalities such as violent biting of the victims to the extent of severe wounding, hitting their heads on the floor and wringing their throats almost to the point of suffocation." In some cases "attempts to rape were followed by the stabbing or killing of the victim. Victims of rape included pregnant and mentally retarded women."(1)

(2) Respondent Government

359. The respondent Government, who for the reasons stated above (2) did not participate in the proceedings on the merits, have not made any statement with regard to the above allegations.

II. Relevant Article of the Convention

360. The facts alleged raise issues under Art. 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

III. Evidence obtained

361. The evidence concerning allegations of rape is voluminous.

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(1) Particulars I, p. 8 9.
(2) See Part I, para. 23.

Direct evidence was obtained through the testimoney of Drs. Charalambides and Hadjikakou, who testified that they examined victims of such rapes.

362. Dr. Charalambides stated before the Delegation:

"As a doctor they brought me a few cases that they were raped but they did not want people to know about it because they were young girls and when the raped girls asked if they could use my services as a gynaecologist - because I am a gynaecologist too, for the Kyrenia area - the Turkish administration refused. So all these cases were brought through the Red Cross to Nicosia."

He confirmed that in those cases which he examined he was medically satisfied that rape had taken place (1).

363. Witness Dr. Hadjikakou also stated that he had to treat victims of rape and that in about 70 cases his examinations allowed the medical finding that rape had in face taken place.

364. Dr. Hadjikakou, in his handwritten notes submitted as part of his evidence, mentioned the following incidents of rape which had been brought to his attention (2):

- A mentally-retarded girl aged 24 was raped in her house by 20 soldiers one after the other. When she started screaming they threw her from the second floor window. She sustained fracture dislocation of the spine and became paralysed. Dr. Hadjikakou treated her for spinal injury.

- One day after their arrival at Voni Turks took girls to a nearby house and raped them.

- One girl of Palekythrou who was held with others in a house was taken out at gunpoint and raped.

- At Tanvu Turkish soldiers tried to rape a 17 year old schoolgirl. She resisted and was shot dead.

- A woman of Gypsou mentioned to him that 25 girls were kept by Turks at Marathovouno as prostitutes.

- Another woman saw several girls being raped.

- A women of Voni was raped on three occasions by four persons each time. She became pregnant.

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(1) Verbatim Record, p. 8.
(2) Addendum to the Verbatim Record, pp. 39, 41.

365. The Delegation also heard evidence from eye-witnesses. Mrs. Kyprianou gave evidence that after the killing described above (1) the Turkish soldiers took a young girl and raped her (2). This statement was corroborated by Mrs. Efthymiou (3).

One of the persons interviewed in refugee camps (Witness E) stated that he had seen the rape of three women by Turkish soldiers at Ayios Georgios. He further reported that at Marathovouno many girls were raped; he and his family had heard their cries (4).

366. A further witness stated that his wife had been raped in front of his children (5).

367. Reference has also been made before the Delegation to several cases of abortion, at the British base, of women who had been victims of rapes by Turkish soldiers (6).

368. Hearsay witnesses of rapes were Mrs. Soulioti, Mr. Hadjiloizou(7) Mr. Odysseos (8), and Mr. Stylianou (9).

Mr. Stylianou spoke of a case of 25 girls who, having been raped, complained to Turkish officers and were then raped by these officers. The witness offered the name of one of the victims in this case and said that the victim was prepared to testify before the Delegation. In addition he mentioned the case of a 50 year old woman who was raped by 10 soldiers in her fields and had to be hospitalised in Kyrenia (10).

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(1) See above, Chapter 3, Deprivation of Life, para. 320.
(2) Verbatim Record, p. 199.
(3) Verbatim Record, p. 220.
(4) Addendum p. 11.
(5) Verbatim Record, p. 57.
(6) Verbatim Record, p. 34.
(7) Verbatim Record, p. 71.
(8) Verbatim Record, p. 93.
(9) Mr. Soulioti and Mr. Stylianou indicated names of eye-witnesses and victims: Verbatim Record, pp. 19 and 34.
(10) Verbatim Record, pp. 33-34.

Mrs. Soulioti stated that:

- in August 1974, while the telephone system was still working, the Red Cross Society received telephone calls from Palekythrou and Kaponti (west of Kyrenia) reporting rapes (1);

- a man (whose name was stated) reported his wife had been stabbed in the neck whilst resisting rape and his granddaughter aged six had been stabbed and killed by Turkish soldiers attempting the rape (2);

- a girl of 15½ years who had been raped, was delivered to the Red Cross (3);

- the witness had to take care of 38 women released from the Voni and Gypsou camps, all of whom had been raped, some of them in front of their husbands and their children, others had been raped repeatedly, or put in houses frequented by Turkish soldiers. The women were taken to Akrotiri hospital in the sovereign base where they were treated. Three of them were found to be pregnant (4).

369. The Delegation also saw a filmed interview of five girls who stated that they were victims of rape.

370. Finally, written statements of 41 alleged victims of rape (5), of four alleged eye-witnesses of rape (6), and of 24 hearsay witnesses of rape (7) have been submitted. These statements were taken by witness Hadjiloizou (8), or other police officers under his instructions, and the names and addresses of the authors of the statements can be obtained from the applicant Government. These statements include reports of repeated rapes by one or several Turkish soldiers (9), rapes in front of close relatives (10), rapes

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(1) Verbatim Record, p. 18.
(2) Verbatim Record, p. 19.
(3) Verbatim Record, p. 21.
(4) Verbatim Record, p. 26.
(5) Statements I, Nos. 11, 12, 13, 15, 16-19, 21-29, 59,61, 65, 100-108, 110, 111, 113-115, 117, 118, 120-122; Statements II, Nos. 5, 11.
(6) Statements I, Nos. 14, 75, 82, 97.
(7) Statements I, Nos. 1, 19, 20, 24, 41, 45, 60, 70-72, 76, 81, 85, 92, 94, 98, 99, 109, 119; Statements II, Nos. 2, 8, 9, 13, 14.
(8) Verbatim Record, pp. 58-71.
(9) Statements I, Nos. 12, 15, 17, 18, 21, 103, 108, 111, 113-115, 118, 120 (victim raped by seven Turks), 121, 122; Statements II, No. 11.
(10) Statements I, Nos. 11, 13 and 118.

committed by Turkish army officers (1), enforced prostitution (2), and the rape of a five months pregnant woman (3).

IV. Evaluation of the evidence obtained

371. The Delegation noted that the two medical witnesses, Drs. Hadjikakou and Charalambides, endeavoured to be precise and to avoid any exaggeration. Their statements were corroborated by the other witnesses, in particular Mr. Kyprianou, Mr. Efthymiou and Witness E, and by the great number of written statements submitted. The Commission is therefore satisfied that the oral evidence obtained on this item is correct.

372. The written statements submitted have, for the reasons already stated (4), not been further investigated. However, together with the above evidence, they constitute further strong indications of rapes committed on a large scale.

V. Responsibility of Turkey under the Convention

373. The evidence shows that rapes were committed by Turkish soldiers and at least in two cases even by Turkish officers, and this not only in some isolated cases of indiscipline. It has not been shown that the Turkish authorities took adequate measures to prevent this happening or that they generally took any disciplinary measures following such incidents. The Commission therefore considers that the non-prevention of the said acts is imputable to Turkey under the Convention.

VI. Conclusion

374. The Commission, by 12 votes against one, finds that the incidents of rape described in the above cases and regarded as established constitute "inhuman treatment" in the sense of Art. 3 of the Convention, which is imputable to Turkey.

B. Conditions of detention

I. Physical ill-treatment

(1) Submission of the Parties

(a) Applicant Government

375. The applicant Government alleged that hundreds of persons including children, women and elderly people were the victims of systematic tortures and savage and humiliating treatment

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(1) Statements I, Nos. 105, 111.
(2) Statements I, Nos. 106, 107, 111.
(3) Statements I, No. 61.
(4) See paras. 77 and 319 above.

during their detention by the Turkish army. They were beaten, sometimes to the extent of being incapacitated. Many of them were subjected to tortures such as whipping, breaking of their teeth, knocking their heads on the wall, beating with electrified clubs, extinction of cigarettes on their skin, jumping and stepping on their chests and hands, pouring dirty liquids on them, piercing them with bayonets etc. Many of them were ill-treated to such an extent that they became mental and physical wrecks (1).

376. Among the persons so treated were those deported to Turkey and kept as prisoners there. Most of them were civilians of all ages from 16 to 70. During their transportation and detention these persons were savagely ill-treated. They were wounded, beaten, kicked, whipped, blindfolded, handfettered, punched to the extent of bleeding, etc.(2).

377. The brutalities complained of reached their climax after the cease-fire agreements and the relevant resolutions of the U.N. Security Council. In fact most of the acts described were committed at a time when Turkish armed forces were not engaged in any war activities. More than 1,000 statements obtained from alleged victims or witnesses described the ill-treatment. They show a pattern of behaviour of the Turkish forces which proves that the atrocities were part of the tactics which the invading forces were to follow. Their object was to destroy and eradicate the Greek population of the Turkish occupied areas, to move therein Turks and thus create a Turkish populated area (3).

378. Some elderly people, women and children who hid out of fear to avoid expulsion from their homes were rounded up by the Turkish army and placed in concentration camps, the main ones being in Voni, Marathovouno, Vitsada and Gypsou, where the inhumanity of the treatment accorded to them defied the imagination(4).

(b) Respondent Government

379. The respondent Government, who for the reasons indicated above (5) did not participate in the proceedings on the merits, have not, apart from the statement mentioned above (6), made any submissions with regard to the above allegations.

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(1) Particulars I, p. 16.
(2) Ibid.
(3) Ibid., pp. 18-19.
(4) Ibid., p. 20.
(5) See Part I, para. 23.
(6) See Part I, para. 40 in fine.

(2) Relevant Article of the Convention

380. The applicant Government's allegations raise issues under Art. 3 of the Convention.

(3) Evidence obtained

381. The main witness who was heard by the Delegation with regard to the allegations of ill-treatment in detention is Mr. Pirkettis, a 37-year-old school teacher (1), who had been deported to Adana.

He stated that he and his fellow detainees were repeatedly beaten after their arrest, on their way to Adana, in the Adana prison and later in the camp at Amasya to where he was transferred.

382. Relevant passages of his statements were as follows:

- with regard to the period after his arrest in Cyprus:

  "they blindfolded us again, they put us in some buses, they began beating us - it was the first time we were beaten very bad on the heads with guns, with the barrel of the gun, or with the other side of the gun, with their fists and kicking us, and there is something else: they took our shoes from us at that time and made us walk through the fields which were full of thorns, thistles ... We were ... being beaten all the time" (2).

- with regard to the transport on the ship to Turkey:

  "Then we were taken to the ship, that was another moment of terrible beating again ... We were tied all the time ... I lost the sense of touch. I could not feel anything for about two or three months ... Every time we asked for water or spoke we were being beaten " (3).

- with regard to the arrival at Adana:

  "... then one by one they led us to prisons, through a long corridor ... Going through that corridor was another terrible experience. There were about 100 soldiers from both sides, with sticks, clubs and with their fists beating every one of us, while going to the other end of the corridor. I was beaten at least 50 times, until I reached the other end, and kicked" (4).

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(1) Verbatim Record, pp. 40 et seq.

(2) Verbatim Record, p. 44.

(3) Verbatim Record, p. 45.

(4) Verbatim Record, p. 46.

- with regard to detention at Adana:

"... anybody who said he would like to see the doctor, he was beaten ... Beating was on the agenda every day. I would not say it was organised beating but it was always there especially by soldiers, sometimes some officers (1). There were one or two very good, very nice people, but they were afraid to show their kindness as they told us" (2)

- with regard to his transfer to Amasia:

"We were loaded again in trucks and taken to the railway station. There were many soldiers there, many policemen, and too many people, and they began spitting on us, cursing, and when we were obliged to pass before them they kicked us, they kept beating us and so on ..." (3)

- with regard to the detention at Amasia:

"... we were all the time ill-treated again". (4)

383. The witness also stated that:

- co-detainees, whose names he indicated, had been ill-treated. For example, at Amasia, a man of 27 was kicked in the mouth and lost several teeth and his lower jaw came off in pieces. Another man was hit on his chest with an iron lock by a Turkish soldier and his whole chest became black and he was aching for a week (5);

- a Turkish officer who was, according to another Turkish soldier, a karate student did his exercises by hitting every prisoner;

- another prisoner told him that on two or three occasions two or three prisoners were hung by the feet over the hole of a water closet for hours (6);

- a man, whose name was indicated by the witness had shown him his back injured by a second lieutenant who used to prick all prisoners with a pin whenever he found a chance when the prisoners were taken into the yard (7).

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(1) Verbatim Record, p. 47.
(2) Verbatim Record, p. 47.
(3) Verbatim Record, p. 47.
(4) Verbatim Record, p. 49.
(5) Verbatim Record, p. 49.
(6) Verbatim Record, p. 50.
(7) Verbatim Record, p. 50.

384. Mr. Pirkettis' evidence was to a great extent corroborated by Dr. Hadjikakou who stated that those deported persons who came back from Adana were all in an emaciated condition and on nine occasions he found signs of wounds (1). Dr. Hadjikakou further reported of cases of ill-treatment in camps in Cyprus and added that he could produce his records because the victims whom he had examined had authorised him to use these records (2). He gave the following general description of conditions in detention at Pavlides garage, Serai prison and Adana as reported to him by former detainees (3):

"They were kept there for several days, some for months, without blankets and were being kept awake all night by purposeful noise-making. Their food at the beginning and for several weeks consisted of one-eighth of a loaf of bread daily with some olives occasionally. There were two buckets of water and two mugs which were never cleaned, from which about 1,000 people had to drink. The toilets were filthy with faeces rising over the basins, and floors were covered with faeces and urine. The latest stories were of people tied up blindfolded taken to Kyrenia to be shipped to Turkey, but for some unknown reason brought back the following day. They were not untied all this time and they all urinated and defecated on themselves. When they were eventually untied they had no water to wash their faces of their clothes and they had to wipe them on the walls and the floor. Those that were sent to Turkey were placed in the hull of a Turkish ship without being untied. Some shiploads were untied, but some were taken tied all the way. They were asking for water and they gave them cupfuls of sea-water. On arrival at the prisons in Turkey they were made to walk and run through the corridor, run the lines by Turkish soldiers to beat them, sometimes with whips, sometimes with the butts of their guns. They were then taken to the yard where some had their shoes taken off them, their pockets and their money. In the prison at Adana they were kept 76 in a cell. They were kept in their cell for 10 days; others for two or three weeks before they were eventually allowed to go into the yard. They were issued with three towels for 76 prisoners and one block of soap per eight persons per month to wash themselves and their clothes. There is a fully corroborated story of a prison doctor at Adana who used to beat up all the prisoners that reported to him. One night they took him a patient with retention of urine and he kicked him downstairs."

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(1) Verbatim Record, pp.108 and 109.
(2) Verbatim Record, p. 110.
(3) Verbatim Record, p. 108.

385. As regards individual cases, Dr. Hadjikakou, inter alia, described the fate of two civilians. One had to amputate his toes with a blade in consequence of ill-treatment. This man was caught in Achna when he went to his village to collect some things from his house. He and another man caught at the same place were beaten up with hard objects. When he asked for water he was given a glass full of urine. His toes were then stepped on until they became blue, swollen and subsequently gangrenous. The smell was so bad that he had to cut the toes with a razor blade. The other man underwent the same treatment and when he was taken to Kanellos Hospital in Nicosia he agreed to have his legs amputated, but did not survive the operation (1). Further details are given in the handwritten notes which Dr. Hadjikakou submitted as part of his evidence (2).

386. Mrs. Soulioti gave the following description of the conditions in the detention centres as reported to her (3):

> "The people who were put in these churches, schools or houses all together were guarded by soldiers; they were not allowed to leave even the premises in which they actually happened to be put. They were kept in terribly overcrowded conditions. In fact, described as lying one on top of the other. They had no mattresses or even blankets to lie on. There were no sanitary facilities, especially as the water had been cut off and they had to drink water from the wells which were sometimes polluted. Old people were crowded in with young children including babies. In an ordinary size room, for instance, there were about - according to one statement - seventy-six women, children and babies according to another, a hundred and fifty in one of the rooms in the school. The food they had, particularly at the beginning, was all that remained in the houses where they happened to be. According to the statements, the men were beaten up regularly for no apparent reason, most of them were old men."

As regards Greek-Cypriots who were detained in Turkey Mrs. Soulioti stated that she was present when the prisoners were released. "They came in a very bad state, with the clothes falling off them, they had not had a bath since they had been taken, and some of them were limping and said that they had been badly beaten."(4).

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(1) Verbatim Record, p. 110-111.
(2) Addendum, p. 38.
(3) Verbatim Record, pp. 8-9.
(4) Verbatim Record, p. 23.

387. Mr. Stylianou described the reported treatment of enclaved Greek Cypriots as follows (1):

"After the second Turkish attack in August 1974 we had about 15,000 Greek Cypriots enclaved in the Turkish-occupied areas. The conditions under which they lived were in several cases and in several areas tragic, owing to the fact that in several areas hundreds of enclaved were beaten and dozens were executed, many of them were ill-treated; Greeks were also ill-treated. They have cut off their ears in some cases like the case of Palekythro and Trahoni ..."

Mr. Odysseos, referring to statements in his possession, described the conditions of Greek Cypriots enclaved in the Morphou School Building:

"All these people were taken in, about 600 of them and they were, let us say, accommodated in a few rooms, about six in one room, nine in another room, 15 in another room; in this small house there were about 60 people. No blankets at the beginning; they had to sleep either on the pupils' desks or on the cement; no food at all. They were not allowed to take even a single thing of their belongings. They were under confinement and Turkish soldiers were guarding all along, day and night; no light during night time. If they wanted to go to the toilet, which was about 50 yards away from the building, they had to ask permission; they were accompanied but definitely not during night time; they were never allowed out during night time. We had it from statements, and especially from this woman (name stated), who by that time had fits every now and then, and diarrhea; she was forced to stay in the same room where people were living to ease herself."

"There was no washing at all. They could not have a bath, wash themselves, and this (name stated) who stayed there about two months in this school building, in her statement to me says she was with the same clothing all along for the whole period of two months. If I can describe the condition myself I would say what I saw people whom I knew very well - they were neighbours well known to me - they were wrecks, psychologically they were wrecks." (2)

388. Five refugees (witnesses B, C, D, H and K), who were interviewed by Delegates in refugee camps, stated that they were either victims or eye-witnesses of beatings in detention centres (3).

389. Several written statements describe beatings of detainees at Voni (4), Palekythro (5), Marathovouno (6), Vitsada (7). There is also one statement according to which no ill-treatment took place at Voni (8). On 13 May 1975 the applicant Government submitted a further seven statements described as being by one civilian and six soldiers taken as prisoners to Turkey who complain of physical ill-treatment and inadequate food supply.

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(1) Verbatim Record, p. 29.
(2) Verbatim Record, pp. 93, 94.
(3) Addendum, pp. 5 (Voni camp), 7, 9, 14 (Voni camp) and 15.
(4) Statements I, Nos. 47, 89, 100, 105, 107.
(5) Statements I, No. 48.
(6) Statements I, No. 75.
(7) Statements I, Nos. 114, 116.
(8) Statements I, No. 12.

(4) Evaluation of the evidence obtained

390. The Commission, considering the personal reliability of the witnesses heard, and the fact that their statements to some extent corroborate each other, finds these statements consistent and credible. It especially accepted after careful examination the evidence given by Mr. Pirkettis, whom it considers honest and sincere.

391. It is true that among the written statements submitted by the applicant Government there is one according to which the conditions of detention at Adana were at one time rather satisfactory (1). However, Mr. Pirkettis stated that there were rooms in the prison which he never saw and which were probably supervised by other officers (2). This would explain the divergence between his testimony and the written statement in question. Mr. Pirkettis himself also mentioned that among the prison personnel some behaved in a friendly manner and disapproved of the ill-treatment of prisoners. It is therefore not in contradiction to his testimony if persons who were held prisoner at other places in Adana report to have been - at least after their arrival - correctly treated. Moreover, Mr. Pirkettis' descriptions of the beating in the corridor on arrival at Adana is fully confirmed by the statement in question (3), and the Commission further notes that in the written statements submitted the living conditions of Greek Cypriot detainees in Turkey were generally described as horrible (4) or the description was similar to that given by Mr. Pirkettis (5).

392. The written statements submitted have, for the reasons already stated (6), not been further investigated. However, together with the above evidence, they constitute further strong indications of physical ill-treatment of prisoners.

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(1) Statements I, No. 35.
(2) Verbatim Record, p. 55.
(3) And also Statements I, Nos. 36, 37, 77, 83.
(4) Statements I, No. 92.
(5) Statements I, Nos. 93, 96.
(6) See paras. 77 and 319 above.

(5) Responsibility of Turkey under the Convention

393. The evidence obtained establishes that, in a considerable number of cases, prisoners were severely beaten or otherwise physically ill-treated by Turkish soldiers. These acts are therefore imputable to Turkey under the Convention.

(6) Conclusion

394. The Commission, by 12 votes against one, concludes: -The testimony of Mr. Pirkettis and of Dr. Hadjikakou suffice to show that prisoners were in a number of cases physically ill-treated by Turkish soldiers. These acts of ill-treatment caused considerable injuries and at least in one case described by Dr. Hadjikakou the death of the victim. By their severity they constitute "inhuman treatment" in the sense of Art. 3 of the Convention, which must be imputed to Turkey.

II. Withholding of food and medicaments

(1) Submissions of the Parties

(a) Applicant Government

395. The applicant Government alleged that detainees were left without food and water for days and without medical treatment.

(b) Respondent Government

396. The respondent Government who for the reasons indicated above (1) did not participate in the proceedings on the merits, have not, apart from the statement mentioned above (2), made any submissions with regard to these allegations.

(2) Relevant Article of the Convention

397. The applicant Government's above allegations raise issues under Art. 3 of the Convention.

(3) Evidence obtained

398. The withholding of drinking water is described by witness Pirkettis. He said that for 2½ days after his arrest he and his co-detainees were not given anything to drink and the heat in the truck taking them from Messina to Adana was so terrible

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(1) See Part I, para. 23.
(2) See Part I, para. 40 in fine.

that some people passed out (1). At Adana anybody who asked to be allowed to see the doctor was beaten. "If they said they had a belly ache they would be beaten in the belly and so on"(2). At Amasya food was very little and very bad (3).

399. Dr Hadjikakou reported that prisoners who were taken to Turkey were given sea water when they asked for something to drink (4). In the detainee camps in Cyprus the food supply was very bad (5). He mentioned the case of a man detained in one of the detention centres and who was hit with the butt of a gun. His shoulder was dislocated but he was not taken to a doctor (6).

400. Witnesses Soulioti and Odysseos likewise reported that food supply and medical treatment in the detention centres was inadequate or not existing (7).

401. Written statements submitted by the applicant Government describe withholding of Red Cross and UN food supplies (8), and withholding of, or insufficient supply of food (9), or medicaments generally (10).

(4) Evaluation of the evidence obtained

402. The Commission accepts as credible, for the reasons stated above (11), the evidence of the witnesses Pirkettis and Hadjikakou concerning the treatment of prisoners who were deported to Turkey. The testimony of these witnesses establishes that, in a number of cases, such prisoners were, for varying periods, not given sufficient food supply and that, in some cases, adequate medical treatment was not made available.

403. The Delegates, during the period fixed for the hearing of witnesses, could not investigate all incidents described in the written statements mentioned. However, together with the above oral evidence, these statements constitute strong indications of withholding of food and water, and of medical treatment, in a number of cases.

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(1) Verbatim Record, p. 46.
(2) Verbatim Record, p. 47.
(3) Verbatim Record, p. 50.
(4) Verbatim Record, p. 108.
(5) Verbatim Record, p. 108.
(6) Verbatim Record, p. 110.
(7) Verbatim Record, pp. 9 and 95.
(8) Statements I, Nos. 104, 105, 116.
(9) Statements I, Nos. 36, 41, 51, 52, 65, 68, 69, 80, 81, 95.
(10) Statements I, Nos. 92, 95.
(11) See paras. 348-349 above.

(5) Responsibility of Turkey under the Convention

404. The conditions of detention of Greek Cypriot prisoners held at Adana and of detainees in the northern area of Cyprus, with the exception of the detention centres Pavlides Garage and Saray prison (1), must be imputed to Turkey under the Convention as all these persons were arrested by and in custody of the Turkish army.

(6) Conclusion

405. The Commission, by 12 votes against one, concludes that the withholding of an adequate supply of food and drinking water and of adequate medical treatment, in the cases referred to above and considered as established, constitutes in the conditions described "inhuman treatment" in the sense of Art. 3 of the Convention which must be imputed to Turkey.

C. Other forms of physical aggression on persons not in detention

I. Submissions of the Parties

(1) Applicant Government

406. Apart from the specific forms of ill-treatment dealt with under A and B of this Chapter, the applicant Government alleged generally that Greek Cypriots in the Turkish occuped area were subjected to inhuman treatment by Turkish soldiers.

(2) Respondent Government

407. The respondent Government, who for the reasons stated above (2) did not participate in the proceedings on the merits, have not made any statements with regard to this allegation.

II. Relevant Article of the Convention

408. The applicant Government's allegations raise issues under Art. 3 of the Convention.

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(1) See Chapter 2, paras. 308, 309 above.
(2) See Part I, para. 23.

III. Observations on the evidence obtained

409. The oral evidence obtained by the Commission's Delegation with regard to ill-treatment concerned only cases of detained persons.

The applicant Government have submitted several written statements of persons not in detention who were allegedly beaten by Turkish soldiers (1). However, the Delegates, during the period fixed for the hearing of witnesses, could not investigate the allegations on ill-treatment of persons not in detention.

IV. Conclusion

410. The Commission, by 12 votes against one, therefore limits its conclusion to the finding that the written statements submitted by the applicant Government constitute indications of ill-treatment by Turkish soldiers of persons not in detention.

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(1) Statements I, Nos. 28, 40, 56 and 100.

Chapter 5 - Deprivation of possessions

A. Submissions of the Parties

I. Submissions of the applicant Government

411. The applicant Government submitted that Greek Cypriots in northern Cyprus had been deprived of their possessions by:

(a) the occupation by the Turkish forces of that area, where thousands of houses and acres of land, enterprises and industries belonging to Greek Cypriots existed;

(b) the eviction of the Greek population from those possessions;

(c) the detention of the remaining Greek population; and

(d) further measures of the Turkish authorities, as described in relevant official statements of the respondent Government (1).

412. In support of this submission the applicant Government filed documentary evidence containing descriptions of many forms of deprivation of possessions signed by or attributed to named alleged victims. These statements relate to loss of farms, sheep and livestock, dwelling houses, agricultural, commercial and industrial enterprises, hotels and other property by persons displaced, brought about either by eviction or by seizure of moveable property and its subsequent removal by the Turkish soldiers, or by conditions arising that abandonment of home and property was the only course.

413. Details of these submissions were as follows:

(1) Immovable property

(a) Houses and land

414. The applicant Government submitted that all the privately owned land and houses belonging to Greek Cypriots in the Turkish occupied areas had come under the full control of the invading army and that most of them had already been distributed to Turkish Cypriots and Turks brought from Turkey in order settle in those areas (2).

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(1) Particulars I.

(2) Ibid., p. 12.

415. The applicant Government repeatedly stressed that the Greek Cypriots who had been expelled from their homes and land by the Turkish army were still being prevented from returning to their possessions and that the Turkish authorities continued to expel the remaining Greek Cypriots from their possessions (1).

They further alleged that the distribution of Greek Cypriot properties had been intensified and organised in a systematic way.

(b) Agricultural, commercial and industrial enterprises

416. The applicant Government referred to the seizure and appropriation by the invading army of enterprises and industries belonging to Greek Cypriots who had been expelled and had not been allowed to return to their property. They stated that the industries which were now being operated under Turkish control included meat preparations and dairy industries, export oriented canning plants in Famagusta and Morphou, grain milling and biscuit factories, the major olive oil and vegetable oil plants, carob, kibbling and fodder factories, textile, footwear and clothing units, almost all brick and mosaic plants, the entire lime producing plants, the only steel pipes plant, the plastics industry in Famagusta and the Nicosia industrial estate, an important concentration of industry (2).

417. They submitted that the Turkish Government through various official statements had made it clear that all the agricultural produce in the Turkish occupied areas, whether belonging to Greeks or not, was taken control of and exploited by the Turkish authorities. In this connection Mr. Ziya Muezzinoglu, the Turkish Permanent Representative to the European Economic Community, was reported to have stated in October 1974 that the supervision of cultivation and irrigation of the citrus groves in the occupied areas was being carried out by experts from Turkey, who had made arrangements for the taking of the fruit, and that an agreement had been reached with cooperative organisations in Turkey on marketing arrangements (3).

418. The applicant Government stated that industrial units belonging to Greek Cypriots in the Turkish occupied areas had been taken over by two large Turkish organisations which had put them into operation with the help of technical personnel from Turkey. Several factories had been reopened and were being operated in Zodhia, Morphou, Famagusta, Yialousa and Nicosia (4).

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(1) Application II and Particulars II, p. 8, and in the telex communications of 26 June, 2 July, 22 October 1975 & 10 May 1976.
(2) Particulars I, pp. 12-14.
(3) Ibid. p. 11.
(4) Particulars II, p. 8.

(c) Tourist industries

419. The applicant Government stated (1) that all operational hotel units in the Turkish occupied areas, a total of 66 hotels with 8,368 beds, belonged to Greek Cypriots. Many other Greek Cypriot owned tourist installations like apartments and restaurants were situated within the occupied area, in particular in the towns of Kyrenia and Famagusta. In the Government's opinion the fact that on 1 October 1974 an agreement had been signed for the setting up of a Tourism Company with the participation of Turkish and Turkish Cypriot Banks and Finance Companies, with the aim of exploiting those hotels and tourist installations in the Turkish occupied areas, showed the Turkish appropriation of the Greek Cypriot tourist industries, all worth millions of pounds.

420. The Government further alleged that after the signing of the agreement Mr. Bener, the Director-General of the Turkish Pensioners Savings Bank, one of the share-holders of the said Company, had said that tourist installations and hotels in Kyrenia were expected to be ready for tourists by the "Kurban Bairam", i.e. towards the end of December 1974. The Turkish Prime Minister had announced in October 1974 that it was planned to send about 2,000 persons from Turkey to provide the necessary personnel for the operation of the said tourist installations before the winter season and that it was also planned to transfer the management of the hotels to the Turkish Tourism Bank and other Turkish enterprises.

421. The applicant Government mentioned hotels which, according to the Government, were operated by Turks. The Turkish Minister of Tourism was reported to have said on 16 May 1975 that he had no hope of getting any income from Cyprus during the 1975 tourist season (2).

(2) Movable property

(a) Looting

422. Looting of houses and business premises belonging to Greek Cypriots was described by the applicant Government as being part of a systematic course of action followed by the Turkish army in all Turkish occupied areas (3). Even the properties of Greek Cypriots who had remained in the Turkish-occupied areas were said not to have escaped this fate.

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(1) Particulars I, pp. 12-14.
(2) Particulars II p. 8.
(3) Particulars I, p. 10, Particulars II, p. 6; telex communications of 26 June 1975 (systematic looting in Famagusta) and 10 May 1976.

The loot was said to have been loaded on Turkish army vehicles and buses seized from Greek Cypriots, while a substantial part of the loot, including vehicles, animals, household goods, building equipment, etc. had been transported by Turkish naval vessels to the mainland.

423. A Turkish Cypriot member of the "House of Representatives" had observed that it had been the purpose of the "peaceful operation" of the Turkish forces to secure the rights and freedoms of the Turkish Cypriot community, and not to permit looting and profiting which had been continuing for months.

424. The applicant Government also submitted that Greek Cypriot inhabitants of the Karpasia area and other Greek villages in the Turkish occupied areas had been expelled and that the looting of their homes by Turkish soldiers had started in their presence while they were sitting in vehicles awaiting to be driven south (1).

(b) Robbery

425. The applicant Government complained of robbery of agricultural produce, livestock, housing units, stocks in stores, in factories and ships owned by Greek Cypriots, as well as of jewellery and other valuables including money found on Greek Cypriots who had been arrested and detained by the Turkish army. They submitted numerous statements supporting these allegations and alleged that generally all goods left in warehouses, fields, factories, houses and shops belonging to Greek Cypriots and worth many millions of pounds had been seized and appropriated by the Turkish army and that nothing had been returned or paid to the owners thereof. They complained in particular of the taking of carrots, citrus, carobs, tobacco and other agricultural products from the Turkish occupied areas and belonging to Greek Cypriots which had been collected and transported by Turkish vessels to markets in several European countries(2).

426. A sale of a great number of vehicles of Greek Cypriots to Turkish Cypriots was reported to have taken place in the port of Famagusta on 12 February 1975.

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(1) Telex communication of 2 July 1975.

(2) Particulars I, p. 10.

(3) Particulars II, p. 7. Telex communication of 10 May 1976.

427. The applicant Government further submitted that flocks of many Greek Cypriots, arrested when coming close to the Turkish controlled areas, were confiscated by Turkish forces without any payment or compensation. It was estimated that 48,000 pigs, 280,000 sheep and goats, 1,400,000 poultry and about 12,000 cattle worth eleven million pounds and belonging to Greek Cypriots were cut off in the occupied areas and appropriated by the Turkish authorities. Their Greek Cypriot owners were not allowed to feed them and, when trying to do so, were killed or captured by the Turkish army (1).

428. Greek Cypriot inhabitants of the Turkish occupied areas were told by the Turkish military authorities that citrus fruits and other agricultural products belonging to Greek Cypriots should be considered as the property of the Turkish military authorities.

429. The applicant Government also complained of the taking of yachts and fishing boats belonging to Greek Cypriots which, according to the Government were listed by the Turkish military authorities for sale by public auction to Turkish Cypriots (2).

(3) Destruction of movable and immovable property

430. The applicant Government alleged that many shops and warehouses, as well as orchards and lemon gardens belonging to Greek Cypriots were set on fire by the Turkish army, at a time when no military activities were carried out. Household equipment, clothing and medical equipment were broken, destroyed or burnt. The destruction included the smashing and setting on fire of icons, other religious items and church equipment in Greek Orthodox churches some of which were converted into mosques (3).

431. Hundreds of thousands of animals were left unattended by their Greek owners who were obliged by the invading army to leave their villages. The animals fell into the hands of the Turkish army and hundreds were shot dead or died because of lack of food and veterinary care (4).

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(1) Particulars I, p. 10.
(2) Telex communication of 26 June 1975.
(3) Particulars I, pp. 17-18, and II, p. 12. In this connection the applicant Government submitted also a newspaper article published in "The Guardian" of 6 May 1976.
(4) Particulars I, p. 18, and Particulars II, p. 12.

II. Submissions of the respondent Government

432. The respondent Government who, for the reasons stated above (1), did not participate in the proceedings on the merits, have not made any statements with regard to the above allegations.

B. Relevant Article of the Convention

433. The Commission considers that the above-mentioned allegations concerning deprivation of possessions raise issues under Art. 1 of Protocol No. 1 which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

C. Evidence obtained

434. The fact that the overwhelming majority of the Greek Cypriot population was displaced from the northern area of Cyprus where it left behind movable and immovable possessions, and that it is not allowed to return thereto, has been discussed in Chapter 1 above.

435. However, specific evidence as to events directly or indirectly affecting the state in which these possessions were left was obtained from numerous sources by the Commission: i.a. testimonies of witnesses heard by the Delegation or of persons interviewed in refugee camps, statements of alleged eye-witnesses submitted by the applicant Government and by witnesses at the hearing, published statements of the Turkish authorities and United Nations documents.

I. Immovable property

1. Houses and land

436. Several witnesses mentioned the occupation of homes and land distributed amongst or just taken by Turkish Cypriots, Turkish soldiers (2) or Turks brought from the mainland (3).

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(1) See Part I, para. 23.
(2) Mrs. Soulioti, Verbatim Record p. 12; Mr. Stylianou, ibid., pp. 33, 35; Mr. Charalambides, ibid., pp. 77, 78, 82; Mr. Odysseos, ibid., pp. 97, 99, 100; Mr. Tryfon, ibid., pp. 136, 141.
(3) Mr. Soulioti, Verbatim Record, p. 12, Mr. Stylianou, Verbatim Record, p. 35 and Mr. Tryfon, Verbatim Record, p. 141. Statements I, No. 39.

437. In particular, Mr. Charalambides, the former Deputy Mayor of Kyrenia, stated that he saw houses belonging to Greek Cypriots, who had sought refuge in the Dome Hotel in Kyrenia, occupied by Turkish Cypriots from Limmasol and that the Turkish Administration set up a so-called "Office for Housing" for the distribution of houses left behind by Greek Cypriots. He further mentioned the taking over of a house by the (Turkish) army and of a hotel by the "navy people" (1). Witness Andronikou also mentioned the occupation of some hotels by the Turkish forces (2). This evidence was corroborated by the statements of alleged eye-witnesses submitted by the applicant Government (3).

438. Mr. Tryfon, Chairman of the Cyprus Land and Property Owners Association, stated that 48,611 houses of Greek Cypriots worth about 250 million pounds were taken over by the Turkish army (4). He submitted statements of persons from i.a. Lapithos, Ayios Georgios, Kyrenia, Morphou and Karavas who were said to have been eye-witnesses of the distribution and/or occupation of their houses by Turkish Cypriots and Turks from the mainland (5). He further referred to publications stating that families of Turkish soldiers who had fought in Cyprus were allowed to settle there (6).

2. Agricultural, commercial and industrial enterprises

439. Mr. Savvides, President of the Cyprus Chamber of Commerce and Industry, described the loss of agricultural, commercial and industrial enterprises and gave an estimation of their value (7).

He stated that this information had been supplied by members of the Cyprus Chamber of Commerce and Industry who had sent reports and figures of the damage suffered by them as a result of the invasion (8).

440. According to this witness many agricultrual complexes, e.g. citrus groves, tobacco plantations etc. were inaccessible to their Greek owners and in Turkish hands, the products were confiscated and exported from Cyprus without the authority of the owners and of the Cyprus Government (9).

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(1) Mr. Charalambides, Verbatim Record, pp. 77, 78, 82.
(2) Verbatim Record p. 129.
(3) Statements I, Nos. 39 and 73.
(4) Verbatim Record, p. 136.
(5) Addendum, pp. 90-94; Statements II, Nos. 3, 17 and 20; Statements I, No. 67.
(6) Verbatim Record pp. 140/141. See also the testimonies of witnesses Iacovou (Verbatim Record p. 166) and Odysseos (Verbatim Record 97, 99).
(7) Verbatim Record, pp. 115-117.
(8) Ibid. p. 115.
(9) Ibid., p. 116.

441. The witness referred to an extract from the Reuter Fruit Report No. 9008 of 18 October 1974 stating that Turkish exports of citrus fruit and especially lemons as officially estimated and declared by Turkey had increased from 30,000 tons in 1973-74 to 80,000 in 1974-75. In his opinion such increase in (Turkish) production within a year was impossible (Turkish Cypriots owned less than 5% of the citrus groves), the difference represented approximately the production of Cyprus (1).

442. According to this witness Mr. Muezzinoglu, the Turkish Permanent Representative to the European Economic Community, who had headed the Turkish Co-ordination Committee for Cyprus, had stated that two State Farms were being set up in the north of Cyprus with the aim of looking after the livestock which were then gathered in temporary pens (2).

443. As to industries and commerce, Mr. Savvides stated that all installations, buildings, plants and machineries had been taken over by the invasion forces and that some of them were working with Turkish participation and control (3).

He also spoke of considerable losses by all major financial institutions, e.g. banks, etc. (4).

444. Witness Azinas, the Commissioner for Co-operative Development, stated that 238 co-operatives existed in the occupied area and submitted a list containing the losses suffered in value consisting of i.a. cash, cheques, bonds or other valuables, goods in stock, vehicles, furniture., These figures were based on declarations by the managing directors of the said co-operatives (5). He further stated that the Turkish forces had obliged some employees of the Turkish Co-operative movement to divide and rent Greek-owned plantations in the Morphou area to Turkish Cypriots and some of the premises of the co-operatives had been used by order of the local Turkish military people and by Turkish Cypriots, like the Morphou Citrus Owners Organisation.

3. Tourist industries

445. Mr. Andronikou, Director General of the Cyprus Tourism Organisation, gave evidence with regard to the losses suffered by tourist industries in the north belonging to Greek Cypriots. He submitted schedules indicating the numbers of operational hotels, hotels under construction, hotel apartments and other tourist accommodation and establishments which, according to the witness, were worth more than 100 million pounds (6).

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(1) Ibid., p. 118 and Addendum, pp. 48 and 49.
(2) Special News Bulletin No. 29.33 of 17 October 1974: See Addendum, p. 46.
(3) Addendum, p. 116.
(4) Ibid., p. 119.
(5) Ibid., pp. 223 and 224; Addendum, p. 98.
(6) Verbatim Record, p. 124; Addendum, pp. 51-68.

446. He also stated that a number of hotels and other tourist establishments had been occupied by Turkish armed forces and used by them either as military headquarters or for allied purposes (1).

447. As to the putting into operation of such establishments, Mr. Andronikou said that statements made by officials of the Turkish Ministry of Tourism showed that the actual operation and management of these establishments were carried out by them (2).

448. When questioned by the Delegation whether there was any indication in the said statements that Turkish organisations had assumed the actual ownership of the hotels, or whether the reference was always to mere operation of hotels, Mr. Andronikou replied that there was no statement that they had taken over the ownership. According to him there was evidence that they were operating, managing and keeping the revenue therefrom, as if the properties concerned were their own (3).

449. Amongst a number of newspaper articles in the Turkish press concerning tourism in the northern area and submitted by Mr. Andronikou (4) one article reported that Dr. Evliyaoglu, Under-Secretary for Tourism and Information of the Turkish Ministry of Tourism and Chairman of the Turkish Cypriot Tourism Enterprises Ltd., had stated i.a. that his enterprise had been established by a decision of the Turkish Council of Ministers (5).

450. Another report mentioned that all the hotels and tourist installations which were under the control of the Autonomous Turkish Cypriot Administration would be transferred to the above-mentioned enterprise (6).

451. A further press report quoted the Turkish Prime Minister as having declared i.a. that he was working on a plan to transfer the management of the hotels to the Turkish Tourism Bank and to other Turkish businessmen (7).

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(1) Verbatim Record, p. 127.
(2) Ibid., p. 131.
(3) Ibid., pp. 129, 131-132.
(4) Addendum, pp. 69-80.
(5) Addendum, p. 74. See also the Statement by Mr. Andronikou, Verbatim Record, p. 130.
(6) Addendum, p. 69.
(7) Ibid., p. 70.

452. Two press reports concerned the leasing of hotels, one containing an invitation by the so-called Tourist Enterprise for tenders for the lease of an 80-bed hotel on the Salamis-Famagusta road (1) and the other quoting the text of a notice of the same enterprise by which persons who had submitted tenders for the leasing of hotels, restaurants, beaches, etc. in the areas of Famagusta and Kyrenia, were to call at its offices in order to discuss the question of rental (2). The latter press report also listed the (Turkish)names and the addresses of people living in Kyrenia, Nicosia, Adana, Ankara, Istanbul and Amsterdam. Mr. Andronikou further stated that the Turkish Government had requested all foreigners who had property or any interest in the north of Cyprus to declare that property or interest (3).

II. Movable property

1. Looting

453. Witness Pirkettis, who was apprehended by the Turkish forces and taken to Adana as a prisoner, described looting which he saw in Trimithi as follows:

> "... It was about 11.30, every house was looted, especially they (Turkish soldiers) took things valuable and small, radios, money, but everything was scattered on the floor and so on, and they took food, whatever it was ..." (4).

454. Looting in Kyrenia was described by Mr. Charalambides who had also been running a private medical practice (5):

> "... the first days of looting of the shops was done by the army, of heavy things like refrigerators, laundry machines, television sets. I saw this because they needed my help to go out and find out where dead bodies were lying ... So that is how I know that in the main streets of Kyrenia all the shops were looted and emptied by the army, and of course, it was everybody's lot afterwards because all doors and windows were open so everybody could walk in, but the heavy goods were removed by army truck". (6)

455. When asked whether he had seen that stolen or looted goods had been loaded on ships, the witness confirmed this as follows:

> "Yes, the first weeks from Kyrenia harbour they used to bring these small ships (navy ships) and we witnessed, from the Dome, because it is so near, the loading of cars and goods, refrigerators, some big things on these ships ". (7)

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(1) Addendum, p. 79.
(2) Ibid., p. 79.
(3) Verbatim Record. p. 130.
(4) Verbatim Record, p. 43.
(5) Verbatim Record, pp. 78, 79.
(6) Verbatim Record, pp. 78, 79.
(7) Verbatim Record, p. 82.

456. Witness Kaniklides, a barrister from Famagusta, reported similar events in his home town (1). He stated that, unlike other inhabitants of Famagusta, he did not flee before the arrival of Turkish troops because his mother was unfit for transportation. After the occupation of Famagusta he spent more than three weeks hidden in his house. He said inter alia:

> "At two o'clock an organised, systematic, terrifying, shocking, unbelievable looting started ... We heard the breaking of doors, some of them iron doors, smashing of glass and we were waiting for them any minute to enter the house. This lasted for about four hours."

457. When questioned by the Delegates as to whether the looting had been carried out by the Turkish army forces, he stated (2):

> "On that day I think it was organised; it must have been the Turkish forces."

458. Mr. Kaniklides further stated that the following day he dared to move the shades of a window in order to look out on the street and observed a man in civilian dress and three soldiers with weapons looting a shop (3).

459. Some of the witnesses declared that they had heard of looting (4).

460. One of the persons heard by the Delegates in the refugee camps (5) also declared that he found his house looted.

461. The Commission further notes that the applicant Government have submitted a great number of written statements by alleged eye-witnesses describing looting in places ranging from Kyrenia to Famagusta (6).

462. This evidence is corroborated by several reports by the Secretary-General of the United Nations mentioning widespread looting in the wake of the hostilities in occupied areas (7),

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(1) Verbatim Record, p. 186.
(2) Ibid., p. 186.
(3) Ibid., pp. 188 and 194.
(4) Mrs. Soulioti: Verbatim Record, pp. 11 and 15; Mr. Stylianou: Ibid., p. 33; Mr. Odysseos: Ibid., pp. 91 and 92; Mr. Savvides: Ibid., p. 120; Mr. Andronikou: Ibid., p. 127; Mr. Tryfon: Ibid., p. 136 and 138. Mr. Tryfon further submitted statements made by alleged eye-witnesses (see Addendum, pp. 90-93) and related to looting in Lapithos, Ayios Georgios, Bellapais, Morphou and Karavas, Verbatim Record, p. 167; Mr. Iacovou: Ibid., p. 167.
(5) Addendum, p. 7.
(6) Statements I, Nos. 3, 12, 21, 29, 32, 33, 37, 39, 41, 43, 46, 47, 49, 53, 54, 58, 61, 63, 66, 69, 71, 73-76, 78, 79, 85-87, 89, 92, 99, 100, 102, 104, 105, 109, 111, 112, 114-117, 120-122; Statements II, Nos. 1-11, 13-20.
(7) UN Document S/11568, p. 11.

the removal of some property from a factory south of Kalopsidha by Turkish forces (1) and looting by Turkish Cypriots and Turkish forces particularly in Famagusta-Varosha (2).

2. Robbery

463. Witness Pirkettis described (3) robbery of personal belongings as follows:

> "... Then they made us come down from the trucks, they left the women and the children in the trucks, they took everything we had: money, watches, rings and crosses, everything valuable. And they made it a lot on the table there ... and there was an officer and he said: We will give it back to you later. But I knew that was lies because they could not know which belonged to whom. They did not write any names or anything."

464. Witness Charalambides stated (4) that in the first two days all the people who were found hiding in their houses were taken for interrogation, and that they lost their watches, lighters and rings; they all came to the Dome Hotel without them.

465. Further evidence concerning robbery of personal possessions was given by persons interviewed in the refugee camps (5). Several witnesses declared that they had heard of robbery (6).

466. The Commission further notes that a great number of written statements by alleged eye-witnesses submitted by the applicant Government also described cases of robbery (7).

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(1) UN document S/11624, pp. 3 and 4.
(2) Ibid. S/11717, p. 11. Also Statements II, No. 10.
(3) Verbatim Record, p. 43.
(4) Verbatim Record, p. 84.
(5) Refugee A, Addendum, p. 2.
Refugee C, Ibid., p. 7.
Refugee D, Ibid., p. 9.
Refugee E, Ibid., p. 12.
Refugee G, Ibid., p. 13.
(6) Mrs. Soulioti, Verbatim Record, p. 16.
Mr. Odysseos, Ibid., pp. 95 and 96.
Mr. Tryfon, Ibid., p. 136 and Addendum, pp. 91-93.
(7) Statements I, Nos. 1, 3, 4, 7, 21, 23, 24, 28, 32, 33, 37-41, 43, 44, 47, 48, 51, 54, 57, 58, 63, 68, 70-72, 76, 80, 83, 88, 94, 97, 100, 102, 109, 112, 113, 116, 121.
Statements II, Nos. 1, 4, 9, 13, 15, 16, 18, 19.

III. Destruction of movable and immovable property

467. Evidence concerning destruction of property was given by witness Charalambides who stated that during the first search of his house by the army some of his medical instruments were badly damaged (1).

468. Further evidence was obtained from witness Kaniklides (2) and persons heard in the refugee camps who stated that they witnessed destruction of property by the Turkish forces in Famagusta, Ayios Georgios, Boghasi and near Mora (3).

469. Witnesses Odysseos (4), Tryfon (5), and Azinas (6) declared that they heard of an order by Turkish military authorities to uproot a dried-out orange orchard at Kalo Khorio, of efforts by Turkish soldiers to burn down all the buildings along the green line in Nicosia and of the destruction of consumer goods respectively.

470. The Commission also notes that a number of the written statements by alleged eye-witnesses describe the breaking of doors and windows of houses, the smashing of furniture (7), icons, candles and other church property (8), the setting on fire of orchards and crops (9) and the killing of animals (10).

D. Evaluation of the evidence obtained

I. General

471. As regards the displacement of the overwhelming majority of the Greek Cypriot population from the northern area, where it left behind movable and immovable possessions, and the established fact that these displaced persons are not allowed to return to their homes in the north, and thus to property left there, the Commission refers to its findings in Chapter 1 above (11).

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(1) Verbatim Record, p. 74.
(2) Ibid., p. 100.
(3) Refugee A, Addendum, p. 1.
Refugee C, Ibid., p. 7.
Refugee H, Ibid., p. 13.
(4) Verbatim Record, p. 101.
(5) Ibid., p. 139.
(6) Ibid., p. 229.
(7) Statements I, Nos. 21, 29, 62, 66, 67, 71, 84, 104; Statements II, Nos. 2, 13, 18-20.
(8) Statements I, Nos. 4, 67, 71, 72, 75; Statements II, No. 9.
(9) Statements I, Nos. 43, 80.
(10) Ibid., Nos. 43, 66, 104.
(11) Cf. also para. 434 above.

II. Immovable property

1. Houses and land

472. As to the specific evidence obtained concerning the occupation of houses and land by Turkish Cypriots, Turkish soldiers and Turks from the mainland, witness Charalambides described the events which took place in Kyrenia in a calm and precise manner. His statement was corroborated by the evidence of some other witnesses and a number of written statements submitted (1).

The Commission, for the reasons stated above (2), could not investigate all incidents described in the written statements, especially those where Turks from the mainland were concerned. However, together with the above evidence, these statements constitute further elements of proof of taking and occupation of houses and land by Turkish Cypriots and Turks from the mainland, both military personnel and civilians.

473. The Commission further observes that about 40,000 Turkish Cypriots originally residing in the south, including approximately 17,000 transferred under negotiated agreements, moved gradually to the north of the island from 1974 onwards (3).

The Commission considers that accommodation had consequently to be found for over 40,000 Turkish Cypriots in the northern area and that this element supports allegations concerning the occupation on a considerable scale of houses and land in the north belonging to Greek Cypriots, and the establishment of an office for housing to regulate the distribution (4).

474. The Commission therefore accepts the evidence obtained as establishing the taking and occupation of houses and land belonging to Greek Cypriots.

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(1) See paras 436-438 above.
(2) See para. 77 and cf. paras. 319, 372, 392. As stated in para. 78, the Commission's Delegation was refused any co-operation by Turkish or Turkish Cypriot authorities for an investigation in the north of Cyprus.
(3) Cf para. 102 above.
(4) Cf para. 437 above.

475. The figures or losses given may be approximate and detailed findings would require a closer examination. However, such details would only be of secondary importance in the determination of the alleged violations of Art. 1 of Protocol No. 1.

476. Moreover, the Commission found strong indications that Turks from the mainland have settled in houses belonging to Greek Cypriots in the north of the island (1).

2. Agricultural, commercial and industrial enterprises

477. The Commission finds no reason to doubt the testimonies of MM. Savvides and Azinas (2). It finds it established that agricultural, commercial and industrial enterprises were taken out of the hands of Greek Cypriots but considers that a definite finding concerning the value and the operation of the said enterprises after 20 July 1974 cannot be made because the matter has not been further investigated for the reasons stated above (3).

3. Tourist industries

478. Witness Andronikou's lengthy and detailed statement does not give rise to any doubt as to its credibility. The Commission considers, however, that the figures of the value of these industries would need further investigation. As regards the putting into operation of some named hotels in Kyrenia and Famagusta, the submitted newspaper cuttings containing advertisements on trips to the said hotels and on leasing of other hotels and statements by Turkish authorities, substantially corroborated Mr. Andronikou's testimony (4).

479. The Commission concludes that the evidence so far obtained proves beyond reasonable doubt the putting into operation of certain hotels in the northern area while further investigations would be required to establish the actual situation as regards the appropriation of such property and its value.

III. Looting and robbery of movable property

480. Witnesses Pirkettis and Charalambides are, as stated above (5), credible and the Commission finds no reason to doubt the testimony of Mr. Kaniklides. Further statements by other witnesses and persons heard in the refugee camps as well as the numerous written statements submitted fully corroborate the descriptions given by these witnesses (6).

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(1) Cf. paras. 436 and 438.
(2) Cf. paras. 439-444.
(3) See paras. 77 and 78.
(4) Cf. paras. 445-452.
(5) Cf. Chapter 4, paras. 371 and 390-391.
(6) Cf. paras. 453-462 and 463-466.

The Commission, therefore, accepts their testimoney as proving beyond reasonable doubt that looting and robbery on an extensive scale, by Turkish troops and Turkish Cypriots have taken place.

IV. Destruction of property

481. The credible testimony of witnesses Charalambides and Kaniklides is further supported by the evidence given by persons interviewed in the refugee camps and by a great number of written statements submitted. The Commission is therefore satisfied that destruction of property has taken place in many cases (1).

482. The evidence concerning the uprooting of a dried out orange orchard, the effort to burn down all the buildings along the green line in Nicosia, and the destruction of consumer goods, as mentioned by witnesses Odysseos, Tryfon and Azinas respectively, constitutes strong indications of the measures described (2).

E. Responsibility of Turkey under the Convention

483. The Commission has already found that the refusal to allow the return of Greek Cypriot refugees and expellees to the north of Cyprus (3) must be imputed to Turkey under the Convention. It now considers that the consequent interference with the peaceful enjoyment by Greek Cypriots of their movable and immovable possessions in the north must equally be imputed to Turkey.

484. The evidence further showed that the taking of houses and land, looting and robbery, and destruction of certain property were effectuated by the Turkish forces. These acts must therefore be imputed to Turkey.

485. As regards such deprivations of possessions by Turkish Cypriots, the Commission considers that, insofar as the persons committing them were acting under the direct orders or authority of the Turkish forces of which there is evidence, the deprivation must equally be imputed to Turkey under the Convention.

F. Conclusion

486. The Commission, by 12 votes against one, finds it established that there has been deprivation of possessions of Greek Cypriots on a large scale, the exact extent of which could not be determined. This deprivation must be imputed to Turkey under the Convention and it has not been shown that

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(1) Cf. paras. 467-470.
(2) Cf. para. 469.
(3) Cf. Chapter 1, para. 108.

any of these interferences were necessary for any of the purposes mentioned in Art. 1 of Protocol No. 1.

487. The question whether any of these acts were justified under Art. 15 of the Convention will be considered in Part III of this Report.

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Chapter 6 -- Forced Labour

A. Submissions of the Parties

I. Applicant Government

488. The applicant Government submitted that a great number of persons detained by the Turkish army in the Turkish-occupied areas, including women, were during their detention made to perform forced and compulsory labour consisting, for example, of cleaning water-courses for the Turks to water the fields, of cleaning and repairing houses, constructing and repairing various structures like road bridges, erecting monuments, cleaning dead bodies out of houses, cleaning out looted houses, cleaning military headquarters, transporting looted goods, etc. This was done under the threat of arms and in many cases day after day throughout the whole period of detention (1).

II. Respondent Government

489. The respondent Government who, for the reasons stated above(2) did not participate in the proceedings on the merits, have not made any submissions with regard to the above allegation.

B. Relevant Article of the Convention

490. The facts alleged raise issues under Art. 4 (2) of the Convention.

Art. 4 states as follows:

"1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour' shall not include,

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life of well-being of the community;

(d) any work or service which forms part of normal civil obligations.'

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(1) Particulars I, p. 17.
(2) Part I, para. 23.

C. Evidence obtained

491. No direct evidence by witnesses was obtained on this item.

492. As a hearsay witness Mrs. Soulioti referred to statements of enclaved or detained Greek Cypriots who were made to work in the surrounding areas (1). Such written statements have also been submitted by the applicant Government. According to these statements women were especially made to clean out Turkish-occupied houses (2). In one case they had to put out dead bodies (3). Greek Cypriot men were compelled to do construction work or to clean up water courses (4).

D. Evaluation of the evidence obtained

493. The facts described in the written statements in question have not been further investigated by the Commission. They constitute, however, indications of compulsion to perform certain work.

E. Responsibility of Turkey under the Convention

494. In most of the statements Turkish soldiers were described as being responsible.

It further appears that the alleged victims were at the material time under the "actual authority and responsibility" of Turkey, in the sense of the Commission's decision on the admissibility of the present applications (5).

F. Conclusion

495. The Commission, by eight votes against three votes and with one abstention, finds that the incompleteness of the investigation with regard to the allegations on forced labour does not allow any conclusions to be made on this issue.

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(1) Verbatim Record. p. 11.
(2) Statements I, Nos. 72, 76, 98, 100, 105, 110, 115, 119.
(3) Ibid., No. 19; cf. also No. 104.
(4) Ibid., No. 111.
(5) See Appendix I, para. 10 of The Law.

Final observations

I. Art. 1 of the Convention

496. The Commission notes that, in their present applications, the applicant Government also alleged a violation of Art. 1 of the Convention.

Art. 1 provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

497. The Commission has applied Art. 1 in its decision on the admissibility of the applications, when determining the scope of its competence ratione loci (1).

498. The Commission, by twelve votes against one vote and with three abstentions, considers that, in its examination of the merits of this case, no further issue arises under Art. 1 as this provision, not granting any rights in addition to those mentioned in Section I, cannot be the subject of a separate breach. It refers in this respect to its Report in Application No 5310/71 (Ireland v. the United Kingdom) (2).

II. Art. 13 of the Convention

499. In its decision on the admissibility of the applications, the Commission did not find that, in the particular situation prevailing in Cyprus since the beginning of the Turkish military action on 20 July 1974, the remedies indicated by the respondent Government could be regarded as effective and sufficient "domestic remedies" within the meaning of Art. 26 of the Convention (3).

500. In its examination of the merits of this case, the Commission has considered Art. 13 of the Convention, which provides:

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

501. The Commission, by thirteen votes against one vote and with two abstentions, has found no evidence that such remedies were in fact available.

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(1) See Appendix I, paras 7-10 of The Law.
(2) See Part III of that Report.
(3) See Appendix I, para. 15 of The Law.

III. Art. 14 of the Convention

502. Art. 14 states:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

503. The Commission has found violations of a number of Articles of the Convention. It notes that the acts violating the Convention were exclusively directed against members of one of the two communities in Cyprus, namely the Greek Cypriot community. The Commission concludes by eleven votes to three that Turkey has thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Art. 14 of the Convention.

IV. Arts. 17 and 18 of the Convention

504. The Commission finally observes that the applicant Government have also invoked Arts. 17 and 18 of the Convention.

Art. 17 provides:

> "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Art. 18 provides:

> "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

505. The Commission, by twelve votes with four abstentions, considers that these provisions do not raise separate issues in the present case.

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PART III - ARTICLE 15 OF THE CONVENTION

A. Submissions of the Parties

506. The Commission decided on 12 March 1976 to invite the Parties' observations on "the applicability of the Convention to a situation of military action as in the present case, bearing in mind in particular Art. 15".

I. Applicant Government

507. The applicant Government submitted (1) that, under the Commission's decision on the admissibility of the applications, the Convention was applicable irrespective of the military situation.

508. Turkey undertook the military operations described in the applications in order to impose, in violation of the Treaty of Guarantee and the Constitution of Cyprus protected by that Treaty, the federal solution pursued by her.

509. The application of the Convention was not excluded by Turkey's concurrent responsibility under other international instruments, especially the Fourth Geneva Convention of 1949: in belligerent operations a State was bound to respect not only the humanitarian law laid down in the Geneva Convention (jura in bello) but also the fundamental human rights. Resolution 2675 (XXV) of the United Nations General Assembly of 9 December 1970 provided that fundamental human rights, as accepted by international law and laid down in international instruments, "continue to apply fully in situations of armed conflict".

510. The applicability of the European Convention on Human Rights to armed conflicts followed also from its Art. 15 (1) which made provision for the case of "war", while no such reference was contained in the otherwise analogous Art. 4 (1) of the International Covenant on Civil and Political Rights.

The reference to "other obligations under international law" in Art. 15 (1) excluded wars violating such obligations as those under the United Nations Charter; it presupposed that the Convention applied to armed conflicts "irrespective of the applicability thereto of 'other obligations under international law', either conventional such as the Geneva Convention or the Hague Regulations or customary."

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(1) Observations of 15 April 1976.

The reference in Art. 15 (2) to deaths "resulting from lawful acts of war" also connoted that the European Convention could be applied simultaneously with "the law of war relating to the jura in bello because there could be deaths during an armed conflict not resulting from lawful acts of war", as complained of in the present case.

511. The derogation provided in Art. 15 was "a right of the State concerned": Art. 15 (3) spoke of the High Contracting Party "availing itself of this right of derogation". If the State concerned did not exercise the right of derogation no other person could invoke it, and neither the Commission nor the Court could apply it ex officio. Turkey had not invoked any right of derogation in the present case, although she had done so in the past on other occasions.

512. Turkey's war against Cyprus was "an aggressive war" and therefore not contemplated by Art. 15 (1). Moreover, no derogation by Turkey with respect to Cyprus could have remained in force after 23 July 1974, the date on which the constitutional order in Cyprus "was restored by the assumption of the office of the President of the Republic by the President of the House of Representatives." The actual war operations were carried out on 20, 21 and 22 July 1974 (first phase) and 14, 15 and 16 August 1974 (second phase), while most of the violations complained of were not committed during those days and "unconnected with any war" in the sense of Art. 15.

513. Turkey never informed the Secretary General of the Council of Europe of any measures of derogation taken under Art. 15 and the Commission could not consider ex officio whether such measures were "strictly required by the exigencies of the situation". In any case, "the nature and extent" of the acts complained of could not be regarded as so required.

514. Even if any of these acts were considered (otherwise) to be in accordance with Art. 15, they were still inconsistent with Turkey's "other obligations under international law", especially the Geneva Conventions and the Hague Regulations, and therefore could not stand under Art. 15.

515. Any notice to the Secretary General of measures of derogation should under Art. 15 (3) have been given promptly; no such notice could be given as late as the closing stage of the Commission's proceedings.

516. Even if Art. 15 applied no derogation could be made from Art. 2 except for deaths resulting from lawful acts of war, or from Arts. 3, 4 (1) or 7 of the Convention; a number of the acts complained of violated Arts. 2, 3 and 4 (1).

517. Even if Art. 15 applied any derogation by Turkey would in the circumstances be incompatible with Arts. 17 and 18 of the Convention.

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II. Respondent Government

518. The respondent Government made the following statement: (1)

"It is without any doubt that if the conditions required by the European Convention on Human Rights concerning the admissibility of an application were fulfilled, the question of the applicability of the Convention in matters of military action and the effect of Art. 15 in such a situation must be examined by the Commission as in cases like Applications Nos. 6780/74 and 6950/75 pending before the Commission.

The present situation is however different. In fact, as my Government has repeatedly brought to the attention of the Commission, the above-mentioned application has been brought by an administration which is not qualified to act in the name of a 'High Contracting Party', a condition required by Art. 24 of the Convention. Turkey, a guarantor State of the constitutional system of the Republic of Cyprus according to the Zurich and London Agreements and the Treaties of Nicosia of 1960 and acknowledged as such by the Cyprus Republic itself, has never recognised such competence on the part of the Greek-Cypriot administration which was constituted in flagrant violation of the above-mentioned international treaties. According to the well-established rules of international law, third parties may not and cannot apply rules to the relations between the parties to the treaty other than those rules agreed in the treaty between the parties in question. My Government therefore firmly believes that the argument that a de facto recognition of a government by a certain number of other States and international organs necessitates the recognition of that government as lawful government cannot be binding on Turkey.

In view of the above you will acknowledge that it is out of the question for my Government to submit, in the course of the proceedings on the merits, their observations on the applicability of the said Convention with regard to military action and the effects of Art. 15 thereto."

B. Relevant Article of the Convention

519. Article 15 of the Convention states as follows:

"1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

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(1) Communication of 15 April 1976. Original French, English translation by the Council of Europe.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

C. Communications by Turkey under Article 15 (3)

I. As to the northern area of Cyprus

520. No communication has been made by Turkey under Art. 15 (3) of the Convention with regard to the northern area of Cyprus.

II. As to the Turkish mainland

521. With regard to the Turkish mainland, the Permanent Representative of Turkey, by a Note Verbale of 23 July 1974, informed the Secretary General of the Council of Europe as follows:

> "The Turkish Government has declared martial law for a duration of one month in the provinces of Ankara, Istanbul, Tekirdag, Izmir, Aydin, Mugla, Kanisa, Kirklareli, Edirne, Canakkale, Balikesir, Adana, Içel and Hatay in conformity with Article 20 of the Constitution.
>
> This decision on martial law which was taken due to a situation that may necessitate war, foreseen in paragraph 1 of Article 15 of the European Convention on Human Rights, is communicated hereby in accordance with the third paragraph of the same article of the above-mentioned Convention."

522. The above declaration was renewed at intervals up to 5 August 1975 and in all cases the Adana region was included, but martial law was lifted in certain other provinces. All declarations were notified to the Secretary General.

523. By letter of 12 November 1975 the Turkish Permanent Representative informed the Secretary General that "Martial Law in the provinces of Ankara, Istanbul, Adana and Içel has been lifted on 5 August 1975. Thus, no province now remains where Martial Law is in force."

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D. Opinion of the Commission

524. The Commission has considered whether there is a basis for applying Article 15 of the Convention in the present case:

- with regard to the northern area of Cyprus, and/or

- with regard to provinces of Turkey where Greek Cypriots were detained.

I. As regards the northern area of Cyprus

525. In its decision on the admissibility of the present applications, the Commission found that the Turkish armed forces in Cyprus brought any other persons or property there "within the jurisdiction" of Turkey, in the sense of Art. 1 of the Convention, "to the extent that they exercise control over such persons or property" (1). It follows that, to the same extent, Turkey was the High Contracting Party competent ratione loci for any measures of derogation under Art. 15 of the Convention affecting persons or property in the north of Cyprus.

526. The Commission notes that no communication was made by Turkey, under Art. 15 (3) of the Convention, with regard to persons or property under her jurisdiction in the north of Cyprus (2).

The Commission further notes that, at the admissibility stage, the respondent Government submitted that they had no jurisdiction over that area (3).

The Commission recalls that, both in the First Cyprus Case (4) and in the Lawless Case (5), it reserved its view as to whether failure to comply with the requirements of Art. 15 (3) may "attract the sanction of nullity or some other sanction". In the Lawless Case the Commission also pointed out that the obligation to inform the Secretary General of a measure derogating from the Convention is "an essential link in the machinery provided in the Convention for ensuring the observance of the engagements undertaken by the High Contracting Parties" and further observed that, without such information, the other Parties will not know their position under Art. 24 of the Convention and the Commission itself will be unaware of

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(1) See Appendix I, para. 10 of The Law.
(2) Cf para. 520 above.
(3) Cf para. 2 above.
(4) See the Commission's (unpublished) Report of 26 September 1958 in Application No 176/56 (Greece v. United Kingdom), Vol. 1, p. 181.
(5) See E.C.H.R., Series B, 1960-1961, pp. 74, 335-336.

facts which may affect the extent of its own jurisdiction with respect to acts of the State in question (1).

527. In the present case the Commission still does not consider itself called upon generally to determine the above question. It finds, however, that, in any case, Art. 15 requires some formal and public act of derogation, such as a declaration of martial law or state of emergency, and that, where no such act has been proclaimed by the High Contracting Party concerned, although it was not in the circumstances prevented from doing so, Art. 15 cannot apply.

528. The Commission, by twelve votes against three votes, concludes as regards the present case that it cannot, in the absence of some formal and public act of derogation by Turkey, apply Art. 15 of the Convention to measures taken by Turkey with regard to persons or property in the north of Cyprus.

II. As to localities in Turkey where Greek Cypriots were detained

529. The Commission notes that certain communications, as set out above (2), were made by Turkey under Art. 15 (3) of the Convention with regard to certain provinces including the Adana region, in which martial law was declared.

530. The Commission considers, however, that the said declaration of martial law cannot, within the conditions prescribed in Art. 15, be extended to cover the treatment of persons brought into Turkey from the northern area of Cyprus.

531. The Commission, by fourteen votes with one abstention, concludes that it cannot, in the present case, apply Art. 15 of the Convention to the treatment by Turkey of Greek Cypriot prisoners brought to and detained in Turkey.

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(1) Ibid. - The annotation on the draft International Covenants on Human Rights prepared by the UN Secretary General (Doc. A/2929) contained the following observations on the emergency clause in Art. 4 of the draft Covenant on Civil and Political Rights: "47. It was generally agreed that the proclamation of a public emergency and consequential derogation from the provisions of the covenant was a matter of the gravest concern and the States parties had the right to be notified of such action. It was further agreed that since the use of emergency powers had often been abused in the past, a mere notification would not be enough."

(2) Cf paras 521-523.

II.

PART IV - CONCLUSIONS

The Commission,

Having examined the allegations in the two applications (see Part II above);

Having found that Art. 15 of the Convention does not apply (see Part III);

Arrives at the following conclusions:

I. Displacement of persons

1. The Commission concludes by thirteen votes against one that, by the refusal to allow the return of more than 170,000 Greek Cypriot refugees to their homes in the north of Cyprus, Turkey violated, and was continuing to violate (1), Art. 8 of the Convention in all these cases (2).

2. The Commission concludes by twelve votes against one that, by the eviction of Greek Cypriots from houses, including their own homes, by their transportation to other places within the north of Cyprus, or by their deportation across the demarcation line, Turkey has equally violated Art. 8 of the Convention.

3. The Commission concludes by thirteen votes against one that, by the refusal to allow the return to their homes in the north of Cyprus to several thousand Greek Cypriots who had been transferred to the south under inter-communal agreements, Turkey violated, and was continuing to violate (1), Art. 8 of the Convention in all these cases (4).

4. The Commission concludes by fourteen votes against one with one abstention that, by the separation of Greek Cypriot families brought about by measures of displacement in a substantial number of cases, Turkey has again violated Art. 8 of the Convention (5).

II. Deprivation of liberty (6)

1. "Enclaved persons"

(a) The Commission, by eight votes against five votes and with two abstentions, concludes that the curfew imposed at night on enclaved Greek Cypriots in the north of Cyprus, while a restriction of liberty, is not a deprivation of liberty within the meaning of Art. 5 (1) of the Convention (7).

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(1) As of 18 May 1976 (see para. 5 above).
(2) See para. 208.
(3) See para. 209.
(4) See para. 210 in fine.
(5) See para. 211 in fine.
(6) See also para. 88 in fine.
(7) See para. 235.

(b) The Commission, by twelve votes with two abstentions, further concludes that the alleged restrictions of movement outside the built-up area of villages in the north of Cyprus would fall within the scope of Art. 2 of Protocol No. 4, not ratified by either Cyprus or Turkey, rather than within the scope of Art. 5 of the Convention. It is therefore unable to find a violation of Art. 5 insofar as the restrictions imposed on Greek Cypriots in order to prevent them from moving freely outside villages in the north of Cyprus are imputable to Turkey (1).

2. "Detention centres"

(a) The Commission, by thirteen votes against one, concludes that, by the confinement of more than two thousand Greek Cypriots to detention centres established in schools and churches at Voni, Gypsou and Morphou, Turkey has violated Art. 5 (1) of the Convention (2).

(b) The Commission, by thirteen votes against one, further concludes that, by the confinement of Greek Cypriots to private houses in Gypsou and Morphou, where they were kept under similar circumstances as in the detention centres, Turkey has equally violated Art. 5 (1) (3).

(c) The Commission, by ten votes against two with two abstentions, finally concludes that, by the confinement of Greek Cypriots to the Kyrenia Dome Hotel after 14 August 1974, Turkey has again violated Art. 5 (1) (4).

3. "Prisoners and detainees"

(a) The Commission, by thirteen votes against one, concludes that the detention of Greek Cypriot military personnel in Turkey was not in conformity with Art. 5 (1) of the Convention (5).

(b) The Commission, by thirteen votes against one, concludes that the detention of Greek Cypriot civilians in Turkey was equally not in conformity with Art. 5 (1) (6).

(c) Considering that it was unable to establish the imputability to Turkey under the Convention of the detention of 146 Greek Cypriots at Saray prison and Pavlides Garage in the Turkish sector of Nicosia, the Commission, by ten votes against two with two abstentions, does not consider itself called upon to express an opinion as to the conformity with Art. 5 of the detention of Greek Cypriot prisoners in the north of Cyprus (7).

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(1) See para. 236.
(2) See para. 285.
(3) See para. 286.
(4) See para. 288.
(5) See para. 309.
(6) See para. 310.
(7) See para. 311.

(d) The Commission, by 14 votes against none, with two abstentions, has not found it necessary to examine the question of a breach of Art. 5 with regard to persons accorded the status of prisoners of war (1).

4. Final observation

The Commission, by seven votes against six with three abstentions, decided not to consider as a separate issue the effect of detention on the exercise of the right to respect for one's private and family life and home (Art. 8 of the Convention).

III. Deprivation of life (2)

The Commission, by fourteen votes against one, considers that the evidence before it constitutes very strong indications of violations of Art. 2 (1) of the Convention by Turkey in a substantial number of cases. The Commission restricted the taking of evidence to a hearing of a limited number of representative witnesses and the Delegation, during the period fixed for the hearing of witnesses, heard eye-witnesses only concerning the incident of Elia. The evidence obtained for this incident establishes the killing of twelve civilians near Elia by Turkish soldiers commanded by an officer contrary to Art. 2 (1).

In view of the very detailed material before it on other killings alleged by the applicant Government the Commission, by fourteen votes against one, concludes from the whole evidence that killings happened on a larger scale than in Elia.

There is nothing to show that any of these deprivations of life were justified under paras. (1) or (2) of Art. 2.

IV. Ill-treatment

1. The Commission, by twelve votes against one, finds that the incidents of rape described in the cases referred to and regarded as established constitute "inhuman treatment" and thus violations of Art. 3, for which Turkey is responsible under the Convention (3).

2. The Commission, by twelve votes against one, concludes that prisoners were in a number of cases physically ill-treated by Turkish soldiers. These acts of ill-treatment caused considerable injuries and at least in one case the death of the victim. By their severity they constitute "inhuman treatment" and thus violations of Art. 3, for which Turkey is responsible under the Convention (4).

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(1) See para. 313.
(2) See paras. 353-355.
(3) See para. 374.
(4) See para. 394.

3. The Commission, by twelve votes against one, concludes that the withholding of an adequate supply of food and drinking water and of adequate medical treatment from Greek Cypriot prisoners held at Adana and detainees in the northern area of Cyprus, with the exception of Pavlides Garage and Saray prison, again constitutes, in the cases considered as established and in the conditions described, "inhuman treatment" and thus a violation of Art. 3, for which Turkey is responsible under the Convention (1).

4. The Commission, by twelve votes against one, concludes that the written statements submitted by the applicant Government constitute indications of ill-treatment by Turkish soldiers of persons not in detention (2).

V. Deprivation of possessions

The Commission, by twelve votes against one, finds it established that there has been deprivation of possessions of Greek Cypriots on a large scale, the exact extent of which could not be determined. This deprivation must be imputed to Turkey under the Convention and it has not been shown that any of these interferences were necessary for any of the purposes mentioned in Art. 1 of Protocol No. 1. The Commission concludes that this provision has been violated by Turkey (3).

VI. Forced labour

The Commission, by eight votes against three votes and with one abstention, finds that the incompleteness of the investigation with regard to the allegations on forced labour does not allow any conclusions to be made on this issue (4).

VII. Other issues (5)

1. The Commission, by twelve votes against one vote and with three abstentions, considers that no further issue arises under Art. 1 of the Convention (6).

2. The Commission, by thirteen votes against one vote and with two abstentions, has found no evidence that effective remedies, as required by Art. 13 of the Convention, were in fact available (7).

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(1) See paras. 404 and 405.
(2) See para. 410.
(3) See para. 486.
(4) See para. 495.
(5) See also para. 88 (complaints concerning searches of homes and interference with correspondence).
(6) See para. 498.
(7) See para. 501.

3. Having found violations of a number of Articles of the Convention, the Commission notes that the acts violating the Convention were exclusively directed against members of one of the two communities in Cyprus, namely the Greek Cypriot community. It concludes by eleven votes to three that Turkey has thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by Art. 14 of the Convention (1).

4. The Commission, by twelve votes with four abstentions, considers that Arts. 17 and 18 of the Convention do not raise separate issues in the present case (2).

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (J.E.S. FAWCETT)

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(1) See para. 503.
(2) See para. 505.

DISSENTING OPINION OF MR. G. SPERDUTI, JOINED BY MR. S. TRECHSEL, ON ART. 15 OF THE CONVENTION

1. In the present case the Commission has concluded that Art. 15 of the Convention is inapplicable. It has, in fact, touched upon a new problem of interpretation in the field covered by Art. 15, which problem it has stated and resolved as follows:

> "in any case, Art. 15 requires some formal and public act of derogation, such as a declaration of martial law or state of emergency, and that, where no such act has been proclaimed by the High Contracting Party concerned, although it was not in the circumstances prevented from doing so, Art. 15 cannot apply." (Report, para. 527)

This proposition has led the Commission to arrive at the conclusion mentioned in the following terms:

> "The Commission, by twelve votes against three votes, concludes as regards the present case that it cannot, in the absence of some formal and public act of derogation by Turkey, apply Art. 15 of the Convention to measures taken by Turkey with regard to persons or property in the north of Cyprus." (Report, para. 528)

I cannot concur in this approach. Since a general problem of interpretation is involved, I feel it my duty to explain, if only briefly, my reasons for disagreeing.

2. I would first point out that another problem of interpretation of the Convention has also been taken into consideration by the Commission, namely that concerning the legal consequences resulting from a failure to comply with the rule laid down in para.(3) of Art. 15 as to information to be given to the Secretary General of the Council of Europe. The Commission has, in this context, recalled the precedents of the first Cyprus case and the Lawless case and has considered in particular a passage in its Report in the Lawless case concerning the ratio for this obligation (see: Eur. Court H.R., Series B, 1960-61, pp. 74, 335-336). It has nevertheless left the above problem open once again:

> "In the present case the Commission still does not consider itself called upon generally to determine the above question." (Report, para. 527)

3. In my opinion the obligation laid down in para. (3) of Art. 15, albeit a very important one, is not to be understood as meaning that strict and rigid respect for it is a condition indispensable to the valid exercise of the right of derogation conferred by that article. Such a sanction cannot easily be deduced from the general principles of international law. It

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would on the other hand have been very easy for the High Contracting Parties to have provided for it if they had had the intention of establishing it : it would have been sufficient to say that this right of derogation could only be exercised, on pain of nullity, if the Secretary General of the Council of Europe were kept fully informed of the measures taken and the reasons which inspired them.

It has even occurred that a High Contracting Party has only informed the Secretary General of the Council of Europe of measures of derogation taken by it after they had already been revoked or withdrawn (see for example the Note Verbale, deposited with the Secretariat General on 16 November 1962 by the Permanent Representative of the United Kingdom, relating to the situation of "public emergency" which had arisen in the Protectorate of Northern Rhodesia, Yearbook of the European Convention on Human Rights, 1962, p. 8). Whilst it is not now necessary to consider whether such a manner of informing the Secretary General is in accordance with the obligation laid down in para.(3)of Art. 15, it can nevertheless be said that this indicates an attitude which does not suggest any conviction that the exercise of the right of derogation could be struck at by a sanction of nullity in the event that it was not accompanied by transmission of the required information.

In brief, the obligation in question should, in principle at least, be seen as an autonomous obligation in the sense that its violation does not affect the valid exercise of the right of derogation flowing from the same article.

The problem as to the legal consequences of such a violation indeed remains. However, there is no need to examine in depth any aspect of this problem apart from that examined above.

4. Having said this, I should draw attention to the following point: the measures of derogation envisaged in Art. 15 are promulgated by public authorities in the exercise of their functions and have an exceptional character even from the point of view of internal law. Given this, it is scarcely conceivable that they should not receive some form of publicity. It does not follow that such publicity will accompany every concrete measure : the arrest of persons, the seizure of property and so forth. A distinction must indeed be drawn between these concrete measures and the acts which authorise and regulate them. Whether laws or ordinances or proclamations are involved, it is inherent in the very nature of these acts that they should be promulgated by means of certain forms of publicity. Furthermore, it does not seem compatible with the spirit of the European Convention that it should envisage a right of derogation which would be exercised without even the citizens of the state, the inhabitants of a territory or other persons subject for some other reason to the jurisdiction of the High Contracting Party being warned in what circumstances and under what conditions they might be subjected to restrictions, constraints or sanctions contrary to the rights and freedoms which the Convention normally assures them.

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5. It should, however, be added that the requirement of publicity just referred to need not necessarily always be understood in the sense that recourse to publicity should immediately precede recourse to concrete measures of derogation. There may even be situations with the following characteristics, namely situations envisaged by domestic or international law as being situations which, from the moment when they arise, render applicable rules - of domestic or international law as the case may be - under which exceptional measures can be taken in the conditions envisaged by them. One cannot see how one could deduce from Art. 15 that it was necessary to resort to further forms of publicity in relation to these rules.

This is notably the case in military occupation of the territory of a foreign state, as can be seen from the second volume of the well-known treatise of Oppenheim (International Law, II, Disputes, War and Neutrality, seventh edition, edited by H. Lauterpacht) :

> "An occupant having military authority over the territory, the inhabitants are under his Martial Law and have to render obedience to his commands." (p. 438)

The state of emergency which the establishment of military rule in a foreign territory brings about for the occupying authorities differs from other emergency situations in that it bears, to a large extent, certain typical characteristics, so that it is sufficient that the military occupation should be known for the state of emergency which it has brought about to be equally known as an inherent phenomenon. This has allowed the elaboration of rules of the law of war concerning the occupation of territories and covering, amongst other matters, the exercise of exceptional powers by the occupying authorities (see the Regulations respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 1907).

6. The ideas which have just been set out can be developed further, still in relation to the hypothesis of the military occupation by one High Contracting Party of the territory of another state.

It is to be noted that the rules of international law concerning the treatment of the population in occupied territories (contained notably in The Hague Regulations of 1907 and the Fourth Geneva Convention of 12 August 1949) are undeniably capable of assisting the resolution of the question whether the measures taken by the occupying power in derogation from the obligations which it should in principle observe - by virtue of the European Convention - where it exercises (de jure or de facto) its jurisdiction, are or are not justified according to the criterion that only measures of derogation strictly required by the circumstances are authorised. In fact these rules duly take account of the necessities of the occupying power : they are inspired by the search for a just balance between military necessities and the safeguarding of the rights and interests of the civil population.

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It follows that respect for these same rules by a High Contracting Party during the military occupation of the territory of another state, will in principle assure that that High Contracting Party will not go beyond the limits of the right of derogation conferred on it by Art. 15 of the Convention. One can cite, for example, Art. 49 of the Fourth Geneva Convention, which article relates to the prohibition of forced transfers in the occupied territories whether en masse or individually, as also to other obligations on the occupying power in relation to the displacement of persons (1).

7. Since my aim in the present opinion has only been to take a position on a general problem of interpretation, I shall not formulate any particular conclusions with regard to the case which is subject of the Commission's Report. I shall note, however, that in paragraph 313 in fine thereof, this Report contains the following passage :

> "Having regard to the above, the Commission has not found it necessary to examine the question of a breach of Art. 5 with regard to persons accorded the status of prisoners of war."

It can be said, in accordance with the above approach, that measures which are in themselves contrary to a provision of the European Convention but which are taken legitimately under the international law applicable to an armed conflict, are to be considered as legitimate measures of derogation from the obligations flowing from the Convention.

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(1) It will be recalled that under an article common to this Convention and the other three Conventions of the same diplomatic conference, "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance." (1st common article, paragraph 3.)

SEPARATE OPINION OF MR F. ERMACORA

I. As to Art. 3 of the Convention

1. Although I agree with the Commission's finding at para. 373 that it has not been shown that the Turkish authorities took adequate measures to prevent the acts in question, I want to stress that Art. 152 of the Turkish Military Code (1) contains a provision for punishment of rape. My translation of the Turkish text reads as follows:

"Article 152

1. Those persons who commit rape or ravishment (defloration) in military service, shall be punished pursuant to Chapter 8 of the Turkish Criminal Code.

2. If the crimes of para. 1 are committed against subordinated persons, the punishment shall be increased by 50% according to Art. 417 of the Turkish Criminal Code."

2. Although I agree with the Commission's finding at para. 393, I consider it necessary to use the same argument as in the case of rape, namely, that it has not been shown that the Turkish authorities took adequate measures to prevent beating and other ill-treatment of prisoners by Turkish soldiers. I consider that such a treatment, apart from obligations under the Third Geneva Convention, is also not a normal behaviour of soldiers and that military ethics prohibit this form of violence against prisoners. The omission of the statement that Turkey did not prevent such ill-treatment might create the impression that it is regarded as a lighter offence of military discipline whose prevention may not be asked for.

II. As to Art. 1 of Protocol No. 1

Although I agree with the Commission's finding at para. 484, I find it necessary to state that it has not been shown that the Turkish authorities took adequate measures to prevent looting although looting is clearly forbidden and made a punishable offence by Arts. 122, 125, 126 and 127 of the Turkish Military Code (2).

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(1) See Cemal Köseoglu, Hasiyeli Askerî Ceza ve Muhakeme Usulü Kanunlari, Istanbul 1958, p. 146.
(2) See loc. cit., p. 120.

III. As to Art. 15 of the Convention

I agree with the Commission that Art. 15 does not apply in the present case. My opinion is based on the following observations on the interpretation of Art. 15 of the Convention in the light of its history, linked with the drafting of Art. 4 of the International Covenant on Civil and Political Rights which is now in force.

1. Art. 15 of the Convention is drafted in similar terms to Art. 4 of the Covenant on Civil and Political Rights (1) which was already preliminarily drafted in 1948 in the course of the elaboration of the first Draft International Covenant on Human Rights. Art. 22 of the Interamerican Convention on Human Rights also contains a clause which corresponds exactly to Art. 15 of the European Convention. The preparatory work of Art. 15 of the European Convention does not give any indication of the intention of the parties to the Convention or the drafters of the Convention in drafting this clause.

2. It seems that the European drafters based themselves wholly on the results of the work of the UN. Indeed in the Commission on Human Rights of the UN the derogation clause now contained in Art. 4 was drafted by a working group (2); the text reads as follows:

"Article 4

1. In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

2. Any State party hereto availing itself of this right of derogation shall inform the Secretary General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed."

In May 1948 the text was revised and the second paragraph was put aside "until implementation articles have been drafted" (3). At the seventh session of the Commission the text read as follows:

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(1) UN Res. 2200 A (XXI).
(2) Docs. E/CN 4/56; E/CN 4/AC 3/1 to 9; see also the Commission's Report on the second session, Doc. E/600.
(3) Doc. E/CN 4/95.

"Article 2

1. In the case of a state of emergency officially proclaimed by the authorities or in the case of public disaster, a State may take measures derogating, to the extent strictly limited by the exigencies of the situation, from its obligations under Article 1, paragraph 1 and Part II of this Covenant.

2. No derogation from Articles 3, 4, 5 (paragraphs 1 and 2), 7, 11, 12 and 13 may be made under this provision. No derogation which is otherwise incompatible with international law may be made by a State under this provision.

3. Any State Party hereto availing itself of the right of derogation shall inform immediately the other States Parties to the Covenant, through the intermediary of the Secretary-General, of the provisions from which it has derogated and the date on which it has terminated such derogation." (1)

The following amendments thereto were drafted:

"Article 2

1. Paragraph 1

United Kingdom

Delete and substitute:

'In time of war or other public emergency threatening the life of the nation the States Parties hereto may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law.'

2. Paragraph 2

Yugoslavia

After the words 'with international law' in Article 2, paragraph 2, line 3, insert the words:

'and in particular with the principles of the Charter of the United Nations and the Universal Declaration of Human Rights'.

United Kingdom

Delete and substitute:

'No derogation from Article 3, except in respect of deaths resulting from lawful acts of war, or from Articles 4, 5 (paragraphs 1 and 2), 7 and 11 shall be made under this provision.'

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(1) Doc. E/CN 4/ 640.

3. Paragraph 3

India

For the word 'immediately' substitute the words 'as soon as may be', and for the words 'the other States Parties ... Secretary-General' substitute the words 'the Secretary-General who shall inform the General Assembly of the United Nations'.

Yugoslavia

After the words in the present text: 'the provisions from which it has derogated' insert the words: 'the reasons by which it was actuated'."

At the eighth session of the Commission (1952) the relevant clause was voted upon. The report of the Commission (1) noted the following:

"Article 3 (Derogations)

227. At its 330th and 331st meetings, the Commission considered Article 2.

278. Scope of derogations. Some representatives favoured some qualification of the kind of public emergency in which a State would be entitled to make derogations from the rights contained in the covenant. In their view, the public emergency should be of such magnitude as to threaten the life of the nation as a whole and not of a portion of the nation, as when a natural disaster had taken place. Although it was recognised that one of the most important public emergencies of such kind was the outbreak of war, many representatives felt that the covenant should, by omitting any mention of war, avoid the imputation of seeming to condone it or to make particular provision for it. A majority of the Commission also favoured the provision that a public emergency giving the State the right to derogate from its obligations under the covenant should be officially proclaimed. Some representatives, however, were of the opinion that public emergency was too restrictive a term because it did not cover natural disasters, which almost always justified the State in derogating from some, at least, of the rights recognised in the covenant. There was general agreement that no derogation incompatible with international law should be allowed under the covenant, although some representatives considered that,

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(1) Doc. E/CN 4/669.

in addition to the expression 'international law', there should be reference, in particular, to the principles of the United Nations Charter and the Universal Declaration of Human Rights. Others pointed out that the principles of the Charter were part of international law and that the principles of the Universal Declaration of Human Rights were not.

279. The consensus of the Commission was that none of the derogations from the obligations under the covenant should involve discrimination on grounds of race, colour, sex, language, religion or social origin. There was some debate, however, whether it was 'solely' on those grounds that discrimination was prohibited. In justification of the word 'solely', it was argued that a State might take steps in derogation from the rights recognised in the covenant that could be construed as discriminatory merely because the persons concerned belonged to a certain race, religion, etc.; the evil to be avoided was discrimination based solely on those grounds.

280. The voting took place at the 331st meeting. The Commission voted upon an amendment of the USSR (E/CN.4/L.121) by division; the words 'caused by circumstances' were rejected by 9 votes to 5, with 4 abstentions; and the words, 'threatening the interests of the people and' were not adopted, there being 8 votes in favour, 8 against, and 2 abstentions. The Commission next adopted, by 13 votes to none, with 5 abstentions, an amendment by France (E/CN.4/L.211), to add after the words 'the life of the nation' in a United Kingdom amendment (E/CN.4/L.139/Rev.1), the words 'and the existence of which is officially proclaimed'. The Commission then rejected an amendment by Yugoslavia (E/1992, annex III, A, article 2), to add after the words 'international law', the words 'particularly the principles of the Charter of the United Nations and the Universal Declaration of Human Rights'. The first part, ending with the words 'United Nations', was not adopted, there being 6 votes in favour, 6 against, and 6 abstentions; the second part was rejected by 7 votes to 3, with 8 abstentions. The Commission finally voted upon the United Kingdom amendment (E/CN.4/L.139/Rev.1) in parts: the first part, reading 'which threatens the life of the nation', was adopted by 14 votes to 4; the word 'solely' was adopted by 9 votes to 7, with 2 abstentions; and the remainder of the amendment, as amended, was adopted by 15 votes to none, with 3 abstentions.

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281. Limitation on derogations. There was much discussion on the rights from which no derogation under the covenant should be permitted. Some representatives expressed their satisfaction with the present specification of the articles in the covenant from which no derogations would be allowed in a state of public emergency under paragraph 1 of the article. Others thought it would be necessary, before the drafting of the covenant was completed, to make a thorough study of the articles to be placed in the category of rights that allowed of no derogation even in times of public emergency. Article 6, paragraphs 1 and 2, and article 8, paragraph 2 (a) (present articles 8 and 10 of the draft covenant on civil and political rights), were mentioned as enunciating rights that should appropriately be included in that category. Some representatives expressed the view that the inclusion of article 13 (present article 15)in that category might cause difficulties, as cases might arise where exercise of one of the rights enunciated in that article would also constitute exercise of a right under articles 14 or 15 (present articles 16 and 17). The expression of opinion might also be the manifestation of a belief. If in such cases derogation from articles 14 and 15 were allowed, while derogation from article 13 was prohibited, an impossible situation might arise. Representatives who took that view considered that a point of substance was involved, because, although they favoured in principle an absolute prohibition of derogation from the right to freedom of thought, conscience and religion, they considered that the manifestation of religion or belief might have to be subject to derogation to the limited extent to which similar derogation would be justifiable under articles 14 or 15.

282. At its 331st meeting, the Commission unanimously adopted the first sentence of the second paragraph.

283. Notification of derogation. There was general agreement that a State wishing to derogate from the rights recognised in the covenant should inform the other States parties to the covenant of its action in accordance with the provisions of paragraph 3. Some representatives thought that a mere notification was not enough; the derogating State should also give the reason by which it was actuated in deciding to make the derogation, although it was not suggested that the reasons for each particular measure constituting such derogation should be notified. Some representatives also emphasised the need for retaining the link between the contracting States and the United Nations, since the covenant was an undertaking between the United Nations and those States.

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284. At its 331st meeting, the Commission adopted, by 8 votes to 3, with 7 abstentions, an amendment by Yugoslavia (E/1992, annex III, A, article 2, paragraph 3), to add after the words 'the provisions from which it had derogated' the words 'the reasons by which it was actuated'. Paragraph 3, as amended, was adopted by 14 votes to none, with 4 abstentions.

285. The article as a whole, as amended, was adopted by 15 votes to none, with 3 abstentions (See article 3, annex IB)."

All in all the following documents are relevant in order to follow the full procedure more closely:

Article 2 of the draft covenant prepared at the sixth session E/1992, annex I; E/CN.4/528, paragraphs 79-86; E/CN.4/528/Add. 1, paragraphs 50-56; E/1992, annex III, A; E/CN.4/L.121, 136. 139, 139/Rev. 1, 211, 212, 213; E/CN.4/SR.330-331; E/CN.4/668/Add. 17; and see paragraphs 277-285. The articles referred to in paragraph 2 have been changed to conform with the order of the articles in this section.

3. As a result of these proceedings it can be said that the said clause in the Covenant is to be considered as a derogation clause, that the notification procedure belongs to the implementation aspects of the Covenant and that the notification is an essential condition for the abrogation of human rights and freedoms. Since the aim of the Convention is similar to that of the Covenant the above conclusion could also be applied to the derogation clause of Art. 15 of the Convention.

The aims of the European Convention, like the aims of other international instruments on the protection of human rights, are focused in its Preamble and in the substantive articles. There cannot be any doubt that the European Convention is designed to establish a collective guaranty of these basic human rights and fundamental freedoms incorporated in the Convention and the additional Protocols. But this guaranty is not an absolute one. The State Parties to the Convention have reserved certain areas where their sovereign will should not be touched, neither by international human rights obligations nor by international intervention. All clauses of the Convention which contain certain exemptions for the State authorities relate to the domestic jurisdiction of the States.

Art. 15 of the Convention exempts a certain area of domestic jurisdiction from the general obligations of respect of human rights ensured in the Convention. The application of this exemption, however, is under the control of the organs established under the Convention. This has already been clarified by the jurisprudence of the Commission and the Court.

4. Art. 15 of the Convention is a kind of protection clause for member States in regard to those situations mentioned in para. 1 of the Article. It permits the legal suspension of human rights.

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It is up to the State to avail itself of the right of derogation from its obligations under the Convention. But a State Party availing itself of the right of derogation shall inform the Secretary General accordingly. In every case where the Commission or the Court examined Art. 15 the Governments concerned informed the Secretary General of the derogation of their obligations under the Convention. In the present case, however, for the first time the respondent Government did not indicate that they derogated from their obligations under the Convention except for the declaration concerning the Turkish region of Adana.

5. The main question before the Commission is two-fold. It has to be considered:

(a) whether the respondent Government were exempted from invoking Art. 15, and/or

(b) whether the Commission is authorised to look into the question of Art. 15 ex officio.

Since Art. 15 is a kind of clausula rebus six stantibus by itself it would be illogical to argue that a State member by reference to this clause is free to apply Art. 15 in a given situation. If this would be accepted, the framework of the Convention would be completely destroyed and the State in question would have freed itself from any obligation under the Convention.

The main condition for applying Art. 15 of the Convention, however, is the application of the Convention. By Art. 1 of the Convention the High Contracting Parties are obliged to secure to everyone within their jurisdiction the rights and freedoms contained in the Convention. Only if the jurisdiction of a member State is involved may Art. 15 of the Convention be applied. The Commission already in its decision on admissibility has decided that the action taken by Turkey after 20 July 1974 established a de facto jurisdiction over this part of the territory of Cyprus, which since then has been occupied or controlled by the Turkish army. It may be a consequence of the application of Art. 3 of the Treaty of Guaranty annexed to the London Agreement 1959. The moment when jurisdiction is exercised, Art. 1 of the Convention must be applied. No place whatsoever falling within the jurisdiction of a member State of the Convention may be exempt from the obligations of the Convention. The member State who exercises jurisdiction over a territory - either factually or legally - is obliged to fulfill the obligations under the Convention.

6. The first question in this context is if the respondent Government were justified in not invoking Art. 15. Could the Turkish Government say that the action taken after 20 July was not "a war" in the meaning of Art. 15 ? (It might be recalled that Art. 4 of the above-mentioned Covenant does not use the expression war but public emergency.) The term "war" is to be understood in the meaning of modern international legislation. The modern international legislation, in particular the attempts to modify the provisions of the Geneva Conventions, avoid the expression "war" and use the expression "armed conflict". There can be no doubt that the events in Cyprus after 20 July 1974 amounted to an armed conflict

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between Cyprus and Turkey or at least between the Greek-Cypriot population of Cyprus and Turkey. Even if military interventions of the above kind may be justified under the said Treaty of Guaranty, the acts leading to violations of human rights or their abrogation may only be justified in the framework of Art. 15 of the Convention.

7. Can Art. 15 be invoked ex officio even if the respondent Government has not done so ? In its Report in the Lawless Case the Commission said:

> "In stating this opinion, however, the Commission is not to be understood as having expressed the view that in no circumstances whatever may a failure to comply with the provisions of para. (3) of Art. 15 attract the sanction of nullity of the derogation or some other sanction." (1)

If the Commission is one of the safeguards of the Convention. it must find ways and means to bring a case occurring within the jurisdiction of a member State within the scope of the Convention as any member State could simply take measures of derogation invoking para. (1) of Art. 15 without observing the provisions of para. (3) of the same Article in order to be exempt from the obligations under the Convention. There are two ways to do so: either the Commission applies Art. 15 ex officio, or it declares the respondent Government cannot rely on para. (1) because it has failed to observe para. (3) of Art. 15.

In view of the Lawless Case it seems that the Commission has the competence to apply Art. 15 ex officio. But it is open to question if it should do so. If the Commission applies Art. 15 ex officio it assumes the role of a State Party and substitutes the sovereign will of a State. However, it is primarily the competence of a given State Party to invoke Art. 15 and, under para. (1), to present all the reasons for a given abregation of human rights. If a Government does not use the means of Art. 15 it is the Government's risk.

If Art. 15 is not invoked and if the Commission does not apply Art. 15 ex officio it follows that Art. 15 cannot be considered as an exemption clause for the respective Government. The consequence is that the provisions of the Convention must be applied without reference to those elements of Art. 15 (1) which justify derogation from obligations to respect human rights.

IV. <u>As to Art. 1 of the Convention</u>

I cannot agree with the opinion of the Commission that Art. 1 of the Convention cannot be the subject of a separate breach. I follow my separate opinion expressed on a similar issue in Application No. 5310/71 (Ireland v. the United Kingdom (2). As stated in that opinion, I consider that Art. 1

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(1) See E.C.H.R., Series B, 1960-1961, page 74.
(2) See pp. 499-500 of the Commission's Report in that case.

can only be violated when there is a consistent pattern of the violations of certain human rights (in particular the right to life or the freedom from inhuman and degrading treatment) which, in regard to other international instruments, are considered as "grave breaches" or as "flagrant and massive violations" of human rights, against which no effective remedy is available and possible. In the present case the respondent Government have not shown that they took adequate measures to prevent the alleged violations and it is to be assumed that the violations found by the Commission belong to the given system in the specific situation.

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SEPARATE OPINION OF MR. M.A. TRIANTAFYLLIDES

1. I am in agreement with the findings of the Commission as regards violations of the Convention.

2. It should, however, be emphasised that this Report does not present the full extent of each violation because in view of the urgency of the case it was not feasible to hear all the hundreds of available witnesses in relation to a really vast number of complaints, resulting from a violation of the public order of Europe on an unprecedented scale.

3. Also, the refusal to allow the Delegation of the Commission to visit the northern area of Cyprus under Turkish occupation has rendered it impossible to investigate a considerable number of other complaints. What the Delegation would have found out among other things on such a visit is indicated by an article published in the English daily newspaper "The Guardian" on 6 May 1976, by an English television team, who managed to visit 26 former Greek villages in the occupied area and found in only four of them the village churches in what could be described as a decent condition, and did not find a single graveyard which had not been desecrated.

Moreover, a visit of the Delegation to the occupied area would have enabled the Commission to evaluate the close relationship between the continuing attempt to change the demographic structure of such area by means of settlement of civilians from Turkey and the continuing displacement from there of its Greek Cypriot inhabitants; furthermore, such a visit could have helped considerably in ascertaining the fate of many missing Greek Cypriots.

4. In addition to the violations of the Convention found by the Commission I am of the opinion that at least two more violations have been established, as follows :

(a) The restrictions imposed on the liberty of enclaved Greek Cypriots in the occupied area are not only contrary to the Fourth Protocol to the Convention (which has not been ratified by either Cyprus or Turkey) but, in view of their extensive and cumulative nature, they also result, in most instances, in deprivation of liberty contrary to Art. 5 of the Convention.

(b) The manner in which the detention of many Greek Cypriots has been effected by Turkish military forces, involving the wholesale separation of men from their families, has not only contravened Art. 5 of the Convention (as found by the Commission), but amounts also to a violation of Art. 8 of the Convention.

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5. I should conclude by drawing attention to the fact that this Report establishes extremely serious violations of the public order of Europe; and at least two of them, which are of the utmost gravity, namely the displacement of persons and the deprivation of possessions, are still continuing. I feel that it is my duty to stress the urgency of the need to restore the public order of Europe in Cyprus.

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SEPARATE OPINION OF MR E. BUSUTTIL

I am not myself satisfied that the facts have been properly established in the present case; and indeed the majority of the Commission acknowledge this in paragraph 82 of the Report when they say that "a full investigation of all the facts has not been possible".

I do not, of course, purport to suggest that any fault for this failure to conduct "a full investigation of all the facts" can be laid at the door of the Commission or of its Cyprus Delegation. The problems confronting the Commission in this case have been essentially political problems, stemming in the main from the posture of non-recognition assumed by the Turkish Government vis-à-vis the applicant Government in the broad field of general international relations, in consequence of which the respondent Government has not seen fit to participate in the proceedings of the Commission under Article 28.

That being the case, it is not, in my view, open to the Commission to report to the Committee of Ministers under Art. 31, for two reasons. First, the wording of Art. 31 makes the initiation of friendly settlement negotiations mandatory, and it is only if such negotiations have proved abortive that the Commission can proceed to make a Report under Art. 31. In the present case, however, given the refusal of the Turkish Government to "enter into talks" with the applicant Government, no friendly settlement negotiations in fact ensued, so that a "solution" was discounted at the very outset. Secondly, to report to the Committee of Ministers under Art. 31 when the provisions of Art. 28 have been rendered nugatory by the non-participation of a High Contracting Party is tantamount to entering a judgment by default.

In my opinion, the Commission is not empowered to enter a judgment by default. Unlike the International Court of Justice and the European Court of Human Rights, it is not a judicial tribunal. The Commission is a sui generis amorphous body which performs divers functions - quasi-judicial, investigatory, political, and auxiliary - throughout the different stages of a case of which it is seized. Where a High Contracting Party defaults on its international obligations under Art. 28, it is not the task of the Commission to enter a judgment by default, but simply to refer the default to the Committee of Ministers in an Interim Report.

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Such a Report would indicate to the Committee of Ministers the inability of the Commission to fulfil its functions under Art. 28 and to proceed to a Report under either Art. 30 or Art. 31 of the Convention.

The precedent of the First Greek Case adverted to by the majority of the Commission in paragraph 56 is not precisely in point, since in that case the Greek Government had very largely co-operated both in the Commission's investigatory proceedings under Art. 28 (a) and in the friendly settlement negotiations under Art. 28 (b).

In the light of the foregoing considerations, therefore, and had I not been unavoidably absent when the votes were taken by the Commission in the May session, I would have found myself in the impossibility of expressing an opinion on the merits of the present Applications and would have felt constrained to abstain.

DISSENTING OPINION OF PROF. DR. BÜLENT DAVER

With all respect due to the Commission, of which I am a member, for the reasons stated below, I disagree with its Report as a whole and with the conclusions arrived at therein.

First of all, I am not in agreement with the Commission's decision on admissibility. I abstained in the vote on that decision because I was not permitted to join my separate opinion thereto, on the ground of the Commission's practice (see decision of the Commission as to the admissibility of Applications Nos. 6780/74 and 6950/75 by Cyprus against Turkey, p. 1, footnote (2)). However, there is nothing in our Convention that forbids a member from stating his separate opinion at the admissibility stage. There is also nothing in our Rules of Procedure which bars a member from submitting a separate opinion.

Furthermore, to my recollection, some members were allowed to join their separate opinions to the admissibility decision in the Iversen case (see Application No. 1468/62, Yearbook 6, pp. 278-332 (at pp. 326-332). See also dissenting opinion of Professor Sperduti on the admissibility of the Application No. 788/60, Austria v. Italy, Appendix II to the Commission Report in that case).

As to the procedure followed by the Commission, I would like to raise the issue that in some important respects the Commission did not comply with its Rules of Procedure. Rule 45, for instance, expressly requires a provisional opinion on the merits of a case after deliberation. However in this case no such provisional opinion has ever been reached. This was also contrary to the Commission's constant practice, particularly in inter-State cases (see Ireland v. the United Kingdom, Application No. 5310/71).

The second point that I would like to emphasise is that in its admissibility decision the Commission did not tackle the problem of the competence of the Party which brought this case before the Commission, to do so. This problem, which was raised at the admissibility stage, was not adequately dealt with by the Commission. However in my opinion this was the crucial problem before the Commission and it merited detailed examination because the State of Cyprus was a State sui generis, created by international agreements (mainly the Zurich, London Agreements and, later, Nicosia Treaties of 1960). A reading of the Constitution of Cyprus shows that not only executive power but also legislative and judicial powers were distributed between the two communities. In other words, the powers of State were divided between the two communities. A close examination of the Constitution (1) clearly shows that

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(1) See the relevant texts of Articles mentioned herein in Annex attached to my dissenting opinion.

this distribution of powers depends upon a delicate balance; indeed the power of veto of the Vice-President, who according to the Constitution should be a Turkish Cypriot (see Cyprus Constitution, Article 1, Annex to this Report), covers not only domestic affairs but also international relations including the right to bring a matter before international instances.

The "High Contracting Party" mentioned in Art. 24 of our Convention does not, according to the Cyprus Constitution, consist only of the Greek Cypriot side of the Government, which alone has addressed the application to the Secretary General of the Council of Europe and alleged the violation of the Convention. Under the Constitution this competence is a joint one to be exercised with the Vice-President of the State (see Articles 46, 49, 50, 54 and 57 of the Cyprus Constitution). However the Greek Cypriot side of the Government has referred the case to the Council of Europe without consulting the Vice-President (see also Article 47 of the said Constitution). This is contrary to the Constitution of Cyprus and consequently contrary to our Convention and constitutes an ultra vires act by a Party holding the powers of state unilaterally, and unlawfully and in violation of the International Agreements mentioned above.

Furthermore, it is important to bear in mind that this Constitution has been violated many times by Greek Cypriots (for instance Turkish Ministers were ousted from the Cabinet). In my opinion the Commission was wrong in side-stepping this crucial matter of violation of the Constitution, an essential point in the case, and arguing that all international bodies and organs recognise the applicant Party as legitimate. The organs mentioned by the Commission, such as the United Nations Assembly or Security Council and Council of Europe, are primarily political organisations acting mainly from political motivations. Our Commission, which is a quasi-judicial organ, had at the admissibility stage the task of examining all juridical problems connected with the admissibility of the application, including the question of the competence of the "High Contracting Party" which referred the case to the Commission. It should also be noted that the Consultative Assembly of the Council of Europe did not accept that the Greek Cypriot side of the Cyprus Parliamentary Delegation could alone represent Cyprus.

In dealing with the background to the events, the Commission's Report does not concern itself with the reasons which led the respondent Government to intervene in Cyprus. The respondent Government has invoked that this intervention was based on the Treaty of Guarantee concluded between the United Kingdom, Turkey and Greece. It is common knowledge that during the summer of 1974 a coup d'état, instigated by the military junta in Athens and carried out by Greek army contingents stationed on the island violated the independence of Cyprus, toppled the actual Government and installed a puppet Government headed by Mr. Sampson. This unlawful and illegal

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interference from outside put an end to the last remnants of constitutional order in Cyprus. The respondent Government has invoked that in such circumstances the Guarantor Powers had a right to intervene, after consultation in order to re-establish constitutional order in the island. If the Guarantor Powers did not agree on joint action, such was the case here, Art. 4/2 of the Treaty of Guarantee gave each power the right to act alone as it saw fit. It should not be forgotten that if there had been no such intervention for the purpose of re-establishing the constitutional order on the island and defending the rights of the long-oppressed Turkish community, the applicant Party would never have had the opportunity of bringing an application before the Commission. This intervention also inevitably helped the collapse of the military junta in Athens and facilitated the establishment of a democratic Government in Greece.

The third point I should like to make is that in the "Background of Events in Cyprus" some important facts have been omitted, which could have shed light on the very complex and intricate Cyprus problem. In my opinion our Report, in order to give a true and exact picture of the situation, should have mentioned all important events, especially those which started in 1963 with the massacre of Turkish families in Nicosia as well as in enclaves and which continued from 1964 onwards and in the summer of 1974 before and during the intervention. Throughout these years the Turkish community of Cyprus has been the victim of systematic ill-treatment by the Greek community. The Turkish community was subjected to many crimes and atrocities during this period. Treated as second-class citizens, the Turks were not able to enjoy even their basic human rights. An appendix showing these events in chronological order could have helped towards a better understanding of this tragic situation behind which lie many human, political, social, cultural and economic factors.

These tragic events, covered and reported by many international news agencies at the time and witnessed also by neutral observers on the spot, such as accredited foreign representatives and members of the United Nations peace-keeping force and the International Red Cross, have unfortunately caused bitter and continuous inter-communal violence between the two different ethnic groups on the island.

The other important points that I should like to raise here are as follows : Firstly at the stage of examination of the merits the Commission did not comply with Art. 28, which provides that:

> "in the event of the Commission accepting a petition referred to it: (a) it shall, with a view to ascertaining the facts undertake <u>together with the representatives of the parties</u> an examination of the petition and, if need be, an investigation for the effective conduct of which the States concerned shall furnish all necessary facilities after an exchange of views with the Commission."

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However the petition of the applicant party was not examined together with the representatives of the respondent Government. Accordingly the mandatory requirements of Art. 28 were not fulfilled. It can be argued that any High Contracting Party can escape from its obligations under the Convention, merely by giving some reason for not participating in the proceedings before the Commission, and that it can thus prevent the Commission from fulfilling its functions. In my opinion if the Commission found that the Convention procedures were blocked in such a way, the proper course for it would have been to refer the case, with an interim Report, to the Committee of Ministers of the Council of Europe, since such a situation is not envisaged by the Convention and raises a new and complex problem. The Committee of Ministers should then take the appropriate measures to induce the respondent Government to co-operate by sending representatives and thus helping the Commission in its functioning.

In my opinion the Commission was wrong to go ahead in this situation and proceed in the absence of the respondent Government. The Commission has argued in its Report that in such a situation it could, like other judicial organs such as the European Court of Human Rights and the International Court of Justice, proceed in absentia (see Report, p. 21). However, this approach is not correct because the Commission is not a court. The express provisions of the relevant texts permit the courts mentioned above to give judgment by default. However in our Convention nothing is said even implicitly in this respect in relation to the Commission. The Commission acts mainly as an investigating body with quasi-judicial powers.

Another important point that I should raise is that the Commission's Report is incomplete since the investigating Delegates sent to Cyprus visited only the Greek Cypriot part of the island. The Delegates heard evidence only from Greek Cypriots and thus only one side of the picture has been given in the Report. It is obvious that such a limited and one-sided inquiry, which lasted barely a few days, could lead only to an incomplete and even unbalanced version of the facts. It can again be argued that this was not the fault of the Commission since the authorities in the northern part of Cyprus did not allow the delegation to visit this part of the island and carry out the necessary investigations. However the Commission was in this respect confronted with the same deadlock as I have mentioned above. In my opinion in order to resolve this the Commission should have addressed itself to the Committee of Ministers and requested its assistance in solving this political problem. After settlement of the preliminary political problem, the Commission should then have gone ahead and visited places throughout the island and taken evidence from a variety of different persons including Turkish Cypriots and have completed its investigation as provided for in Art. 28 (a) of the Convention.

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I should also like to mention that some very important documentary evidence highly relevant to the case, for instance, UN reports concerning inter-communal violence on the island, is missing from our Report. Documents of that kind, originating from a neutral and impartial organisation such as the UN should have been taken into consideration by the Commission.

Certain other important evidence is also missing from the Report. For instance the United Nations authorities on the island abstained from giving evidence to the Delegates. They have said that their impartial and neutral position prevented them from co-operating with the Commission (see Report, p. 19). This attitude was incomprehensible since the Commission is an international institution. In the absence of co-operation from these international institutions the Commission was prevented from fulfilling its duty under Art. 28 (a). Again in this situation the Commission should have addressed itself to the Committee of Ministers requesting it to intervene in the matter with the higher authorities of the United Nations.

In addition I should like to state that the Commission and its investigating Delegates did not deal with the atrocities committed against members of the Turkish community, especially those isolated in enclaves in the summer of 1974. Such an inquiry would have helped the Commission to arrive at a better and truer version of events which subsequently occurred. Although in principle the Commission cannot act by itself without being seized of an application by a High Contracting Party (1) - in this case presumably Turkey - it could rightly and properly have examined the alleged atrocities against the Turkish Cypriots insofar as they are relevant to the issues raised in this case. This has not been done by the Commission.

As to the establishment of the facts and the evidence taken by the Commission we know that the sole object and aim of evidence is to assist in the ascertainment of the truth of disputed facts or the determination of points in issue. However, some of the evidence taken by the Commission cannot, in my opinion, be considered as conclusive. It is, rather, circumstantial or presumptive. Certain evidence was partly derivative, being hearsay or rumour and thus not the best evidence to prove the facts in dispute in this case. In many instances the evidence consists of testimony given solely by Greek Cypriots.

In addition, in proceedings in an inter-State case it is essential that counter evidence should be produced in order to arrive at the truth of the facts in issue. In this case the respondent Government has not, for the reasons stated in their submissions, taken part in the proceedings on the merits and it was not therefore possible to obtain counter-evidence during the investigation and examination of the petitions by the Commission.

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(1) Assuming that the State concerned has not accepted the right of individual petition - Cyprus not having done so.

To sum up briefly, the unilateral evidence taken by the Commission during its very short visit to the island must raise serious doubts as to the soundness of the Commission's findings and may endanger the very basis of the Report as well as the conclusions as to violations of the Convention.

The Commission also did not deal properly and adequately in its Report with the question of the applicability of the Convention in a situation of armed conflict and failed to apply it for that purpose. Art. 15 provides that in situations of emergency threatening the life of the nation, a High Contracting Party may take measures derogating from its obligations under the Convention to the extent required by the exigencies of the situation. Although the respondent Government did not formally communicate a notice of derogation to the Secretary General of the Council of Europe concerning Cyprus, the state of martial law proclaimed in Turkey and notified to the Secretary General of the Council of Europe in fact covered all provinces near Cyprus. In my opinion although this point was not invoked by the respondent Government during the proceedings, the Commission should have applied this Article to such situation. Since the respondent Government rejected the argument that Cyprus was under her jurisdiction she could not have invoked this point without contradicting herself. On the other hand the Commission, in accepting that the northern part of the island was under the de facto jurisdiction of the respondent Government, could logically and consequently have accepted that the state of martial law existing in Turkey also extended, as a matter of actual fact, to the parts of the island under the respondent Government's control.

As to the problem of imputability and responsibility, in my opinion some isolated acts by individuals during an armed conflict cannot properly engage the responsibility of a State unless it has been shown beyond doubt that such acts were in fact ordered, organised and systematically conducted by the responsible authorities. In order to attribute such acts to the respondent Government in the present case, the Commission should also have shown clearly that official tolerance for such acts was displayed by the competent agents of the respondent Government. There is no conclusive evidence that such tolerance was displayed.

Final conclusion

For the reasons stated above, and having observed that the actual applicant Party is not the legitimate and legal High Contracting Party envisaged in the original constitutional order erected by the Cyprus Constitution and sanctioned by international Agreements, and having contemplated that the Commission's Report is inevitably one-sided, unfortunately incomplete, lacking in many crucial facts relevant to the case, that it arrives at conclusions without the counter evidence which is the very essence of all modern legal systems and omits some important legal issues and is thus an unbalanced Report which cannot help in any way to solve this highly complex problem, and having noted furthermore that in such situations, where there is a non co-operating Party, the Commission's best and most adequate form of action would be first to address

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itself to the Committee of Ministers in order to facilitate its functioning and to further the aim of the Convention and thus to complete its task as provided in the Convention, I am against the Report as a whole and am opposed to the conclusions of the Commission as to the alleged violations of the Convention complained of by the applicant Party.

ANNEX

CONSTITUTION OF CYPRUS OF 6 APRIL 1960 (1)

Part I - General Provisions

Art. 1. The State of Cyprus is an independent and sovereign Republic with a presidential régime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided.

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Art. 46. The executive power is ensured by the President and the Vice-President of the Republic.

The President and the Vice-President of the Republic in order to ensure the executive power shall have a Council of Ministers composed of seven Greek Ministers and three Turkish Ministers. The Ministers shall be designated respectively by the President and the Vice-President of the Republic who shall appoint them by an instrument signed by them both. The Ministers may be chosen from outside the House of Representatives.

One of the following Ministries that is to say the Ministry of Foreign Affairs, the Ministry of Defence or the Ministry of Finance, shall be entrusted to a Turkish Minister. If the President and the Vice-President of the Republic agree they may replace this system by a system of rotation.

The Council of Ministers shall exercise executive power as in Article 54 provided.

The decisions of the Council of Ministers shall be taken by an absolute majority and shall, unless the right of final veto or return is exercised by the President or the Vice-President of the Republic or both in accordance with Article 57, be promulgated immediately by them by publication in the official Gazette of the Republic in accordance with the provisions of Article 57.

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(1) See Peaslee, Constitutions of Nations, 3rd ed. 1968, Vol. III - Europe, pp. 138 - 216.

Art. 47. The executive power exercised by the President and the Vice-President of the Republic conjointly consists of the following matters that is to say :

.....

(c) appointment by an instrument signed by them both of the members of the Council of Ministers as in Article 46 provided.

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Art. 49. The executive power exercised by the Vice-President of the Republic consists of the following matters, that is to say:

.....

(d) right of final veto on decisions of the Council of Ministers concerning foreign affairs, defence or security as in Article 57 provided.

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Art. 50. 1. The President and the Vice-President of the Republic, separately or conjointly, shall have the right of final veto on any law or decision of the House of Representatives or any part thereof concerning:

(a) foreign affairs, except the participation of the Republic in international organisations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate.

For the purposes of this sub-paragraph "foreign affairs" includes:

(i) the recognition of States, the establishment of diplomatic and consular relations with other countries and the interruption of such relations. The grant of acceptance to diplomatic representatives and of exequatur to consular representatives. The assignment of diplomatic representatives and of consular representatives, already in the diplomatic service, to posts abroad and the entrusting of functions abroad to special envoys already in the diplomatic service. The appointment and the assignment of persons, who are not already in the diplomatic service, to any posts abroad as diplomatic or consular representatives and the entrusting of functions abroad to persons, who are not already in the diplomatic service, as special envoys;

(ii) the conclusion of international treaties, conventions and agreements;

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Art. 54. Subject to the executive power expressly reserved, under Articles 47, 48 and 49, to the President and the Vice-President of the Republic, acting either separately or conjointly, the Council of Ministers shall exercise executive power in all other matters other than those which, under the express provisions of this Constitution, are within the competence of a Communal Chamber, including the following:

(a) the general direction and control of the government of the Republic and the direction of general policy;

(b) foreign affairs as in Article 50 set out;

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Art. 57. 1. On a decision being taken by the Council of Ministers such decision shall be transmitted forthwith to the office of the President and of the Vice-President of the Republic respectively.

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3. If a decision relates to foreign affairs, defence or security as in Article 50 set out, the President or the Vice-President of the Republic or both shall have a right of veto which they shall exercise within four days of the date when the decision has been transmitted to their respective offices.

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SEPARATE OPINION OF MR. G. TENEKIDES

I declare my agreement in principle with the present Report insofar as it concerns, in particular, the violations of the Convention in the case under consideration.

Availing myself, however, of the right given to me by Art. 31 (1), I reserve my opinion on the following points :

1. The number of concrete cases which have come under the Commission's consideration is far from corresponding with the mass of events (massive violations) which form the background of the case.

- This applies, for example, in the case of the two thousand people declared missing. The impossibility of furnishing, in the present case, tangible proof of violation of Art. 2 (1), did not absolve the Commission from the duty to draw conclusions from the lack of information, after two years, as to the fate of these people.

- The situation of the Greek Cypriots living in certain enclaves in the occupied zone has not been examined with the attention that might have been wished. The signatory of these lines has the conviction that violations of Arts. 8 and 5 have been committed against these people.

- Whilst violations of Art. 1 of the First Protocol concerning the peaceful enjoyment of possessions have been found with regard to private property, with the necessary legal implications, no mention is made of cultural patrimony (churches, ancient or mediaeval monuments, objects of art, libraries) which, taking account of the local traditions, occupies a particularly high place in the scale of values.

The difficulty faced by the Commission in making a judgment of a judicial nature on the two last mentioned matters arises from the obstacles encountered by the Delegates in trying to make enquiries in the northern part of Cyprus. It follows from this that the respondent Government's non-observation of Art. 28 in relation to "the obligation on the States concerned to furnish every facility after an exchange of views with the Commission", far from constituting a simple procedural incident, is of such a gravity that it could have featured in the conclusions of the present Report, amongst the major violations of the Convention.

2. Every act of "public authority" carried out by the Turkish Cypriots in contravention of the provisions of the Convention is, as a result of the situation created in the zone of military occupation in Cyprus, imputable to the respondent party. There exists, indeed, on all the evidence, a direct causal relationship between the presence of the military force from the continent

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and the opportunity for persons of the same ethnic origin to carry out such acts. It follows that the case of the 146 Greek Cypriots detained in the Sarail prison or the Pavlides Garage, as well as analogous cases, are in my opinion imputable to the respondent Government.

3. In relation to everything concerning continuing violations as related in the Report, which are circumstances gravely compromising European public order, the Commission had the possibility, acting under Art. 31 (3), of proposing measures necessary in the circumstances for the purposes of an urgent return to the situation demanded by the duty of applying the Convention.

DISSENTING OPINION OF MR S. TRECHSEL ON ART. 14 OF THE CONVENTION

Contrary to the opinion of the majority of the Commission I am of the opinion that Art. 14 does not apply at all in a case where a violation of the Convention has already been found. In fact, the Commission is called upon to make a choice between two alternatives: either a particular guarantee of the Convention has been violated or not. If one of the guarantees set out in Arts. 2 - 13 of the Convention, 1 - 3 of Protocol No. 1 or 1 - 4 of Protocol No. 4 is found to have been violated, there is no room for an additional finding according to which the violation is aggravated by an element of discrimination.

I concede that discrimination in itself could constitute a wrong, amounting to the violation of a human right. It could then be said, for instance, that the pattern of behaviour of the Turkish military forces in Cyprus, by discrimination, violated human rights of the whole Greek-Cypriot community in the northern area of the country. Under the Convention, however, Art. 14 prohibits discrimination only in connection with "the enjoyment of the rights and freedoms set forth" therein. This wording is to be read in the sense that only where an unreasonable differentiation is made between individuals both enjoying, though to a varying degree, the rights and freedoms set forth in the Convention, can there be discrimination. Such might be the case, for instance, in a discriminate interference with one of the rights set forth in Arts. 8 - 11 in circumstances covered by paragraph 2 of these Articles. As soon as there has been a violation of the Convention, however, the very concept of discrimination/reasonable differentiation becomes meaningless.