

109TH CONGRESS
1ST SESSION

H. R. 857

To amend the International Claims Settlement Act of 1949 to allow for certain claims of nationals of the United States against Turkey, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2005

Mr. PALLONE (for himself, Mr. BILIRAKIS, Mrs. MALONEY, Mr. CALVERT, Mr. VAN HOLLEN, Mr. LOBIONDO, Mr. ANDREWS, Mr. ROGERS of Alabama, Mr. HINCHEY, Mr. MENENDEZ, Mr. MCGOVERN, and Mr. McNULTY) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the International Claims Settlement Act of 1949 to allow for certain claims of nationals of the United States against Turkey, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American-Owned Prop-
5 erty in Occupied Cyprus Claims Act”.

1 **SEC. 2. INTERNATIONAL CLAIMS SETTLEMENT ACT.**

2 The International Claims Settlement Act of 1949 (22
3 U.S.C. 1621 et seq.) is amended by adding at the end
4 the following new title:

5 **“TITLE VIII—CLAIMS AGAINST**
6 **TURKEY**

7 **“SEC. 801. PURPOSE.**

8 “The purpose of this title is to provide for the deter-
9 mination of the validity and amounts of claims against
10 Turkey which arise out of the continued exclusion of na-
11 tionals of the United States from property they own that
12 is located in those portions of the territory of Cyprus
13 which Turkey occupies. This title shall not be construed
14 as authorizing or as any intention to authorize an appro-
15 priation by the United States for the purpose of paying
16 such claims.

17 **“SEC. 802. DEFINITIONS.**

18 “As used in this title—

19 “(1) the term ‘claimant’ means any national of
20 the United States who files a claim under this title.

21 “(2) the term ‘Claims Fund’ means the special
22 fund established in the Treasury of the United
23 States composed of such sums as may be paid to or
24 realized by the United States pursuant to the terms
25 of any agreement settling those claims described in

1 section 804 that may be entered into between the
2 Governments of the United States and Turkey;

3 “(3) the term ‘Commission’ means the Foreign
4 Claims Settlement Commission of the United States;

5 “(4) the term ‘Cyprus’ means the Republic of
6 Cyprus;

7 “(5) the term ‘national of the United States’
8 means—

9 “(A) a natural person who is a citizen of
10 the United States; and

11 “(B) a corporation or other legal entity
12 which is organized under the laws of the United
13 States or of any State, the District of Colum-
14 bia, or the Commonwealth of Puerto Rico, if
15 natural persons who are citizens of the United
16 States own, directly or indirectly, 50 percent or
17 more of the outstanding capital stock or other
18 beneficial interest of such corporation or entity;

19 “(6) the term ‘property’ means any real prop-
20 erty, or any right, or interest in real property, in-
21 cluding any lease owned under the laws of Cyprus
22 and located in those portions of the territory of Cy-
23 prus that are occupied by Turkey;

24 “(7) the term ‘Turkey’ means—

25 “(A) the Republic of Turkey;

1 “(B) any agent of the Government of Tur-
2 key, or any unincorporated association that
3 purports to discharge any function of a nation-
4 state under the auspices of the Government of
5 Turkey, including, but not limited to, the unin-
6 corporated association known as the ‘Turkish
7 Republic of Northern Cyprus’;

8 “(C) any political subdivision, agency, or
9 instrumentality of Turkey, including, but not
10 limited to, the Turkish Armed Forces; and

11 “(D) any organization that purports to be
12 a political subdivision, agency, or instrumen-
13 tality of the unincorporated association known
14 as the ‘Turkish Republic of Northern Cyprus’.

15 **“SEC. 803. COMMENCEMENT OF NEGOTIATIONS BY THE**
16 **SECRETARY OF STATE.**

17 “The President is urged to authorize the Secretary
18 of State to commence negotiations with Turkey and to
19 continue such negotiations until an agreement is reached
20 with respect to the payment by Turkey of claims certified
21 under section 807. The Commission shall receive claims,
22 determine the validity of claims, and make awards under
23 section 804 as of the effective date of this title without
24 regard to whether or not the President authorizes the Sec-
25 retary of State to commence such negotiations and with-

1 out regard to whether or not the Secretary of State com-
2 mences such negotiations if authorized.

3 **“SEC. 804. RECEIPT AND DETERMINATION OF CLAIMS.**

4 “(a) DETERMINATION OF CLAIMS.—The Commission
5 shall receive and determine in accordance with applicable
6 substantive law, including international law, the validity
7 and amounts of claims by nationals of the United States
8 against Turkey arising on or after July 20, 1974, for the
9 fair rental market value of the use and continued occupa-
10 tion by Turkey of property located in the territory of Cy-
11 prus which—

12 “(1) is owned by such nationals under the laws
13 of Cyprus, and

14 “(2) at the time the exclusion from or occupa-
15 tion of the property began, was owned, under the
16 laws of Cyprus, wholly or partially, directly or indi-
17 rectly, by nationals of the United States,

18 to the extent restoration or adequate compensation for
19 such use and occupation has not been made.

20 “(b) RIGHTS IN PROPERTY RETAINED.—A claimant
21 shall not be required or deemed, either directly or indi-
22 rectly, to transfer, waive, or otherwise forfeit any right of
23 ownership in or to the property that the claimant owns
24 under the laws of Cyprus as a condition of or as the result

1 of filing a claim under this title, having the claim deter-
2 mined, or accepting an award based on the claim.

3 “(c) SUBMISSION OF CLAIMS.—Any claim under sub-
4 section (a) may not be considered unless it is submitted
5 to the Commission within the period specified by the Com-
6 mission by notice published in the Federal Register within
7 60 days after the date of the enactment of this title or
8 of legislation making appropriations to the Commission
9 for payment of administrative expenses incurred in car-
10 rying out its functions under this title, whichever date is
11 later. The period specified by the Commission shall not
12 be more than a period of 24 consecutive calendar months
13 beginning on the last day of the month in which the notice
14 is published.

15 **“SEC. 805. OWNERSHIP OF CLAIMS.**

16 “A claim may be favorably considered under section
17 804—

18 “(1) only if the property right on which the
19 claim is based was owned, wholly or partially, di-
20 rectly or indirectly, by a national of the United
21 States under the laws of Cyprus on the date on
22 which the exclusion from or occupation of the prop-
23 erty began; and

24 “(2) only to the extent that the claim has been
25 held by one or more nationals of the United States

1 continuously from that date until the date the claim
2 is filed with the Commission.

3 **“SEC. 806. OFFSETS.**

4 “In determining the amount of any claim under this
5 title, the Commission shall deduct all amounts the claim-
6 ant has received from any source on account of the same
7 loss or losses for which the claim is filed.

8 **“SEC. 807. CERTIFICATION; ASSIGNED CLAIMS.**

9 “(a) CERTIFICATION OF CLAIMS.—

10 “(1) TO THE CLAIMANT.—The Commission
11 shall certify to each claimant who files a claim under
12 this title—

13 “(A) the amount determined by the Com-
14 mission to be the loss suffered by the claimant
15 which is covered by this title; and

16 “(B) if, on the date on which the certifi-
17 cation under subparagraph (A) is made, Turkey
18 is excluding the claimant from the claimant’s
19 property, a mathematical basis determined by
20 the Commission for calculating the loss suffered
21 by the claimant for the continued use and occu-
22 pation of the property by Turkey after the date
23 of the award.

24 “(2) TO THE SECRETARY OF STATE.—The
25 Commission shall certify to the Secretary of State—

1 “(A) the amount of each claim certified
2 under paragraph (1)(A);

3 “(B) any mathematical basis certified
4 under paragraph (1)(B) in connection with that
5 claim; and

6 “(C) a statement of the evidence relied
7 upon and the reasoning employed in making the
8 Commission’s determination of the amount re-
9 ferred to in subparagraph (A) and the mathe-
10 matical basis referred to in subparagraph (B).

11 “(b) ASSIGNED CLAIMS.—In any case in which a
12 claim under this title is assigned by purchase before the
13 Commission determines the amount due on that claim, the
14 amount so determined shall not exceed the amount of ac-
15 tual consideration paid by the last such assignee.

16 **“SEC. 808. CONSOLIDATED AWARDS.**

17 “With respect to any claim under section 804 which,
18 at the time of the award, is vested in persons other than
19 the person by whom the original loss was sustained, the
20 Commission shall issue a consolidated award in favor of
21 all claimants then entitled to the award. The award shall
22 indicate the respective interests of such claimants in the
23 award, and all such claimants shall participate, in propor-
24 tion to their indicated interests, in any payments that may

1 be made under this title in all respects as if the award
2 had been in favor of a single person.

3 **“SEC. 809. CLAIMS FUND.**

4 “(a) ESTABLISHMENT.—The Secretary of the Treas-
5 ury may establish in the Treasury of the United States
6 the Claims Fund for the payment of unsatisfied claims
7 of nationals of the United States against Turkey, as au-
8 thorized by this title.

9 “(b) DEDUCTION FOR ADMINISTRATIVE EX-
10 PENSES.—The Secretary of the Treasury shall deduct
11 from any amounts covered into the Claims Fund an
12 amount equal to 5 percent thereof as reimbursement to
13 the Government of the United States for expenses in-
14 curred by the Commission and by the Department of the
15 Treasury in the administration of this title. The amounts
16 so deducted shall be covered into the Treasury as miscella-
17 neous receipts.

18 **“SEC. 810. AWARD PAYMENT PROCEDURES.**

19 “(a) CERTIFICATION OF AWARDS TO SECRETARY OF
20 THE TREASURY.—The Commission shall certify to the
21 Secretary of the Treasury, in terms of United States cur-
22 rency, each award made pursuant to section 804.

23 “(b) PAYMENT OF AWARDS.—

24 “(1) PRINCIPAL AMOUNTS.—Upon certification
25 of each award made under section 804, the Sec-

1 retary of the Treasury shall, out of the sums covered
2 into the Claims Fund, make payments on account of
3 such awards as follows, and in the following order
4 of priority:

5 “(A) Payment in the amount of \$5,000 or
6 the principal amount of the award (excluding
7 any calculations made under any mathematical
8 basis certified under section 807(a)(1)(B)),
9 whichever is less.

10 “(B) Thereafter, payments from time to
11 time, in ratable proportions, on account of the
12 unpaid balance of the principal amounts of all
13 awards (including any calculations made under
14 any mathematical basis certified under section
15 807(a)(1)(B)) according to the proportions
16 which the unpaid balance of such awards bear
17 to the total amount in the Claims Fund avail-
18 able for distribution at the time such payments
19 are made.

20 “(2) SUBSEQUENT PAYMENTS.—After payment
21 has been made in full of the principal amounts of all
22 awards pursuant to paragraph (1), pro rata pay-
23 ments may be made on account of any interest that
24 may be allowed on such awards.

1 “(c) REGULATIONS.—Payments or applications for
2 payments under subsection (b) shall be made in accord-
3 ance with such regulations as the Secretary of the Treas-
4 ury may prescribe.

5 **“SEC. 811. SETTLEMENT PERIOD.**

6 “The Commission shall complete its affairs in connec-
7 tion with the settlement of claims under this title not later
8 than 3 years after the final date for the filing of claims
9 as provided in section 804.

10 **“SEC. 812. TRANSFER OF RECORDS.**

11 “The Secretary of State, the Secretary of the Treas-
12 ury, and the Secretary of Defense shall transfer or other-
13 wise make available to the Commission such records and
14 documents relating to claims authorized by this title as
15 may be required by the Commission in carrying out its
16 functions under this title.

17 **“SEC. 813. AUTHORIZATION OF APPROPRIATIONS.**

18 “There are authorized to be appropriated for any fis-
19 cal year beginning on or after October 1, 2005, such sums
20 as may be necessary to enable the Commission and the
21 Department of the Treasury to pay their respective admin-
22 istrative expenses incurred in carrying out their functions
23 under this title. Amounts appropriated under this section
24 may remain available until expended.

1 **“SEC. 814. FEES FOR SERVICES.**

2 “(a) LIMITATION ON FEES.—

3 “(1) LIMITATION.—No remuneration on ac-
4 count of services rendered on behalf of any claimant,
5 in connection with any claim filed with the Commis-
6 sion under this title, may exceed 10 percent of the
7 total amount paid pursuant to any award certified
8 under the provisions of this title on account of such
9 claim.

10 “(2) NOTIFICATION OF AGREEMENTS.—Any
11 agreement contrary to the limitation set forth in
12 paragraph (1) shall be unlawful and void.

13 “(b) PENALTY FOR VIOLATION.—Whoever, in the
14 United States or elsewhere, demands or receives, on ac-
15 count of services rendered to which paragraph (1) applies,
16 any remuneration in excess of the maximum permitted by
17 subsection (a), shall be fined not more than \$5,000, or
18 imprisoned not more than 12 months, or both.

19 **“SEC. 815. APPLICATION OF OTHER PROVISIONS.**

20 “(a) IN GENERAL.—To the extent they are not incon-
21 sistent with the provisions of this title, the following provi-
22 sions of title I of this Act shall apply to this title: sub-
23 sections (b), (c), (d), (e), and (h) of section 4 and sub-
24 sections (c), (d), (e), and (f) of section 7. Any reference
25 in such provisions to ‘this title’ shall be deemed to be a
26 reference to those provisions and to this title.

1 “(b) APPLICABILITY OF ADMINISTRATIVE PROCE-
 2 DURE.—Except as otherwise provided in this title and in
 3 those provisions of title I referred to in subsection (a), the
 4 Commission shall comply with the provisions of subchapter
 5 II of chapter 5, and the provisions of chapter 7, of title
 6 5, United States Code.

7 **“SEC. 816. SEPARABILITY.**

8 “‘If any provision of this title or the application there-
 9 of to any person or circumstance is held invalid, the re-
 10 mainder of this title or the application of such provision
 11 to other persons or circumstances shall not be affected.’”.

12 **SEC. 3. JURISDICTION OF U.S. DISTRICT COURTS.**

13 (a) IN GENERAL.—Chapter 85 of title 28, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing new section:

16 **“§ 1370. Civil actions against private persons by na-**
 17 **tionals of the United States who own real**
 18 **property in Cyprus**

19 “(a) IN GENERAL.—The district courts shall have
 20 original jurisdiction of any civil action brought by a na-
 21 tional of the United States—

22 “(1) who holds title to any property under the
 23 laws of Cyprus that is located in that portion of the
 24 territory of Cyprus that is occupied by Turkey as

1 the result of the invasion of Cyprus by Turkey on
2 July 20, 1974, and

3 “(2) who has been excluded from the property
4 by reason of such occupation,
5 against any private person who for any purpose and in
6 any way uses, occupies, or benefits from that property at
7 any time during the period of such exclusion, for the fair
8 rental value of the property during the period of such use,
9 occupation, or benefit.

10 “(b) DEFINITIONS.—As used in this section—

11 “(1) the term ‘Cyprus’ means the Republic of
12 Cyprus;

13 “(2) the term ‘national of the United States’
14 means—

15 “(A) a natural person who is a citizen of
16 the United States; and

17 “(B) a corporation or other legal entity
18 which is organized under the laws of the United
19 States or of any State, the District of Colum-
20 bia, or the Commonwealth of Puerto Rico, if
21 natural persons who are citizens of the United
22 States own, directly or indirectly, 50 percent or
23 more of the outstanding capital stock or other
24 beneficial interest of such corporation or entity;

1 “(3) the term ‘private person’ means any nat-
2 ural person or legal entity other than Turkey;

3 “(4) the term ‘property’ means any real prop-
4 erty or any right or interest in any real property, in-
5 cluding any lease to which a national of the United
6 States holds title under the laws of Cyprus; and

7 “(5) the term ‘Turkey’ means—

8 “(A) the Republic of Turkey;

9 “(B) any agent of the Government of Tur-
10 key, or any unincorporated association that
11 purports to discharge any function of a nation-
12 state under the auspices of the Government of
13 Turkey, including, but not limited to, the unin-
14 corporated association known as the ‘Turkish
15 Republic of Northern Cyprus’;

16 “(C) any political subdivision, agency, or
17 instrumentality of the Republic of Turkey, in-
18 cluding but not limited to the Turkish Armed
19 Forces; and

20 “(D) any organization that purports to be
21 a political subdivision, agency, or instrumen-
22 tality of the unincorporated association known
23 as the ‘Turkish Republic of Northern Cyprus’;

24 “(c) SPECIAL RULES.—In any civil action brought
25 under this section—

1 “(1) process shall be deemed served if service is
2 accomplished in any manner provided under this
3 title;

4 “(2) the district court shall not consider the
5 doctrine of forum non conveniens and shall refuse to
6 hear any motion or request by any person or party
7 that the civil action be dismissed on the grounds of
8 forum non conveniens;

9 “(3) in determining whether the person or
10 party asserting the civil action has lawful title, the
11 district court shall apply only the laws of Cyprus in
12 making that determination;

13 “(4) in determining the amount of any award
14 in the civil action, the district court shall consider
15 only evidence of the fair rental market value of the
16 property for the period of occupation, use, or benefit
17 by the person against whom the action is brought,
18 as that value would have been calculated in Cyprus
19 if the plaintiff had not been excluded from the prop-
20 erty; and

21 “(5) the court shall deduct the amount of any
22 award paid to the plaintiff under title VIII of the
23 International Claims Settlement Act of 1949, or the
24 amount of any judgment for the plaintiff under sec-
25 tion 5 of the American-Owned Property in Occupied

1 Cyprus Claims Act on account of the same use, oc-
 2 cupation, or benefit that is the basis of the action
 3 under this section.

4 “(d) LIMITATION OF ACTION.—Any civil action
 5 against a private person under this section may not be
 6 brought later than 36 consecutive calendar months after
 7 the last day of the month in which the private person
 8 ceases to use, occupy, or benefit from the property. This
 9 subsection applies in lieu of section 1658 of this title.”.

10 (b) CONFORMING AMENDMENT.—The table of sec-
 11 tions for chapter 85 of title 28, United States Code, is
 12 amended by adding at the end the following new item:

“1370. Civil actions against private persons by nationals of the United States
 who own real property in Cyprus.”.

13 **SEC. 4. VENUE.**

14 (a) IN GENERAL.—Chapter 87 of title 28, United
 15 States Code, is amended by adding at the end the fol-
 16 lowing new section:

17 **“§ 1408. Venue for civil actions against private per-**
 18 **sons brought by nationals of the United**
 19 **States who own real property in Cyprus**

20 “A civil action under section 1370 may be brought
 21 only in the United States District Court for the District
 22 of Columbia and the United States District Court for the
 23 Southern District of New York.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
 2 tions for chapter 85 of title 28, United States Code, is
 3 amended by adding at the end the following new item:

“1408. Venue for civil actions against private persons brought by nationals of
 the United States who own real property in Cyprus.”.

4 **SEC. 5. ACTION AGAINST TURKISH GOVERNMENT.**

5 (a) JURISDICTION OF U.S. COURTS.—The Govern-
 6 ment of Turkey shall not be immune from the jurisdiction
 7 of the courts of the United States or of the States in any
 8 case in which—

9 (1) rights in property of a national of the
 10 United States that is occupied by the Government of
 11 Turkey in violation of international law are in issue;
 12 and

13 (2) that property or any property exchanged for
 14 such property—

15 (A) is present in the United States in con-
 16 nection with a commercial activity carried on by
 17 the Government of Turkey in the United
 18 States; or

19 (B) is owned or operated by an agency or
 20 instrumentality of the Government of Turkey
 21 and that agency or instrumentality—

22 (i) is engaged in a commercial activity
 23 in the United States; or

1 (ii) purchases or otherwise acquires
2 any good or service for which the approval,
3 authorization, or consent of the United
4 States is required by law, by the President,
5 or by any department, agency, or instru-
6 mentality of the United States Govern-
7 ment.

8 (b) APPLICABILITY OF AND RELATIONSHIP TO FOR-
9 EIGN SOVEREIGN IMMUNITIES ACT.—

10 (1) APPLICABILITY.—The provisions of chapter
11 97 of title 28, United States Code, apply to a civil
12 action brought under subsection (a) as if the action
13 were brought under such chapter.

14 (2) ASSERTION OF INDEPENDENT JURISDIC-
15 TION.—The jurisdiction conferred by subsection (a)
16 is in addition to any jurisdiction conferred by chap-
17 ter 97 of title 28, United States Code.

18 (c) DEDUCTIONS OF OTHER AWARDS.—In any action
19 brought under subsection (a), the court shall deduct from
20 the amount of any judgment the amount of any award
21 paid to the plaintiff under title VIII of the International
22 Claims Settlement Act of 1949, or the amount of any
23 judgment for the plaintiff under section 1370 of title 28,
24 United States Code, on account of the same subject mat-
25 ter that is the basis of the action under this section.

1 (d) DEFINITIONS.—In this section—

2 (1) the term “Government of Turkey” includes
3 all the entities described in subparagraphs (B), (C),
4 and (D) of section 802(7) of the International
5 Claims Settlement Act of 1949;

6 (2) the term “agency or instrumentality of the
7 Government of Turkey” means any of the entities
8 described in subparagraphs (B), (C), and (D) of sec-
9 tion 802(7) of the International Claims Settlement
10 Act of 1949;

11 (3) the term “court of the United States” has
12 the meaning given that term in section 451 of title
13 28, United States Code;

14 (4) the terms “national of the United States”
15 and “property” have the meanings given those terms
16 in section 802 of the International Claims Settle-
17 ment Act of 1949; and

18 (5) the term “State” means each of the several
19 States, the District of Columbia, and any common-
20 wealth territory, or possession of the United States.

21 **SEC. 6. EFFECTIVE DATE.**

22 This Act and the amendments made by this Act shall
23 take effect on the date of the enactment of this Act.

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