

## CYPRUS'S EU ACCESSION AND EU-TURKEY CONVERGENCE

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### I. Introduction

Nicholas Emiliou gave expression to the hopes of many when he wrote that Cyprus's accession into the EU would serve the interests of all the parties involved in the partition of the Island:

“It would offer security to both Cypriot communities and would foster mutual trust. It would serve as a guarantee for the respect of human rights and democratic principles for the people of Cyprus. It would also strengthen the economic development of Cyprus, the benefits of which would be enjoyed by both communities. Finally, it would contribute to the long term stabilization and peace in [the] Southeastern Mediterranean.”<sup>1</sup>

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1 Nicholas Emiliou, „The Constitutional Impact of Enlargement at EU and National Level: the Case of the Republic of Cyprus”, in: Alfred Kellerman, Jaap de Zwaan and Jenö Czuczai (eds.), *EU Enlargement: The Constitutional Impact at EU and National Level*. 2001 T.M. C Asser Instituut, The Hague, pp. 243- 57, at p. 257.

This statement was made at the turn of the millennium. Since then the „Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem”,<sup>2</sup> known as the Annan Plan after its drafter UN Secretary General Kofi Annan, has failed<sup>3</sup> and the EU is going ahead with the accession of a divided Cyprus. In this paper we look at the implications of this decision and of the failure of the 2002 settlement plan for the stabilisation of the area concerned.

## II The Rejection of the Annan Plan: Who is to Blame?

The Annan Plan for the solution of the problem of Cyprus has failed. Who is responsible for this? Was the Annan plan a sustainable compromise? Did it take the interests of both sides into consideration? Was it feasible at all to aim for a “win-win” situation? Was the link between the resolution of the conflict and the accession of Cyprus to the EU realistic or was it counterproductive? Has Turkey fallen into a “Cyprus trap”? And what does the accession of a divided Cyprus mean for the EU? Will the precautions taken in Copenhagen be sufficient to prevent the EU from being harmed?

### 1. Reproaches to the Turkish Cypriot Leadership

For the world public opinion and the United Nations (UN), the leader of the Turkish Cypriots, Rauf Denktash carries the political responsibility for the failure of the latest negotiations on Cyprus. During the night of 10/11 March 2003 both the Greek and Turkish Cypriot leaders had to communicate to the UN Secretary General whether they agreed to the holding of referenda about the peace plan by, the Greek and Turkish Cypriot population. The newly elected Greek Cypriot President Tassos Papadopoulos agreed but President Denktash declined in spite of pressure by the United States and the United Kingdom. Kofi Annan had to conclude to his dismay that his attempt at mediation had failed. He is sceptical about the future. It is unclear whether there will be another opportunity in the near future. EU diplomats have expressed the view that we have reached the

2 Extracts of the plan are attached at the end of this article.

3 For a good, recent analysis of the demise of the UN plan see Clement Dodd, *Disaccord on Cyprus – The UN Plan and After*. He Eothen Press, Huntingdon, 2003.

end of the road. In their view, Rauf Denktash has not exactly done the Turkish Cypriots a service because now they will not receive the structural funds that come with the preparation for EU accession.<sup>4</sup> Sir Dávid Hannay, the British commissioner responsible for the Cyprus dossier suggested that the Turkish Cypriot leader always meant to sink the initiative and that Kofi Annan was not really given a chance. An American representative commented that the Turkish Cypriot population had been deprived of the possibility to decide themselves about their own future. For Günter Verheugen, European Commissioner with responsibility for enlargement, Turkey bore part of the responsibility for this failure. Mr Verheugen addressed Turkey saying that he could not imagine that the Commission would positively recommend the opening of accession negotiations with Turkey as long as the situation with respect to Cyprus remained unchanged. He called the breakdown of the UN talks an obstacle on the Turkish road towards EU accession.

If one looks at these comments, then Rauf Denktash – backed by Turkey, as Mr Verheugen stated – is to blame for the failure of the most recent attempt at mediation. But that is short sighted. First of all, it is true that the Turkish diplomats and the *État majeur* did express objections against the Annan plan. But the same was not true for the AKP government elected in November 2002, under the leadership of Recep Tayip Erdogan. Secondly, the Greek Cypriot leadership has never officially had to declare its agreement with the signature of the proposal, not even in front of its own constituency. The election on 16 February 2003 of the nationalist Tasos Papadopoulos as president instead of the more conciliatory Glafkos Clerides is an indication that in the eyes of many inhabitants of the south the concessions in the Annan plan towards the Turkish Cypriot population were considered too generous.

## 2. Cyprus and the New Turkish Government

The convergence of Turkey towards Europe requires a constructive attitude on the part of Turkey with regards to the Cyprus problem. The problem is however, that while the Government may be willing to make concessions with regard to Cyprus in order to further the accession of Tur-

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4 Funds are currently being awarded to the recognised government of the Republic of Cyprus.

key to the EU, it has difficulties in making its policy prevail against the *État majeur* and the Foreign Ministry.<sup>5</sup> These see the Cyprus problem strictly in a security context, as was demonstrated in 1998, when the Greek Cypriots bought S-300 missiles from Russia. These long range and highly capable anti-aircraft missiles were meant to put an end to the Turkish hegemony over Cypriot airspace. However, they would also have enabled the Greek Air Force to fly into Cyprus in accordance with the Greek-Cypriot defence doctrine, as well as to allow to control part of Turkish airspace and to operate against targets on mainland Turkey. Ankara declared the deployment of such missiles a *casus belli* and the conflict nearly escalated into a full-scale war. Greece had to let the pressure off by agreeing to have the missiles installed on Crete instead.

The strongly security policy oriented outlook of Turkey resurfaced when on 11 November 2002, immediately before the European Council of Copenhagen, the Secretary General of the United Nations Kofi Annan presented his plan for Cyprus. Annan wanted to put pressure on the leaders of both sides. The Copenhagen Summit was beckoning, and with it the perspective of admitting a united Cyprus into the EU. Also, Annan was expecting positive impulses from the outcome of the November elections in Turkey, which had brought about the change from the old political elite and brought to power the AKP. The AKP had perhaps not entirely discarded its Islamic roots, but in its election campaign the party had presented itself unambiguously as pro-European. It was hoped that by 12, 13 December the foundations of a solution could be laid down so that the European Council could propose the accession of a united Cyprus. As we all know, even after prolongation of the negotiations this hope was misplaced.

In Turkey, the Prime Minister elect, Mr. Recep Tayyip Erdogan took a conciliatory stance when Annan presented his plan for Cyprus. This was not surprising, as he had just returned from a good-will tour of the European capitals, lobbying for an early date for the opening of accession negotiations with the EU. Erdogan's stance met with resistance from the Turkish foreign service (then represented by Omur Oymen), the military, the Turkish President Ahmet Necdet Sezer and the former Prime Minister Bülent Ecevit. They objected to the reduction in the number of Turkish tro-

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5 Whereas the Parliament is divided on this issue, for the Turkish population there of course are emotions involved, as Turkish soldiers had to die in 1974 to rescue the Turkish Cypriots despite international guarantees.

ops in Cyprus proposed in the Annan plan, and to its generous territorial concessions for the benefit of the Greek Cypriot inhabitants of the island. When Mr. Ecevit declared that the reduction of troops in Cyprus was unacceptable, he no doubt voiced the scepticism of the *État majeur*. Thus, The AKP government, intent on pursuing EU membership and therefore favouring a compromising attitude on the Cyprus question, challenged the views of many whose role was to deal with national security.

Besides, many people in Turkey, were far more sceptical than the AKP government about Turkey's chances of being admitted into the EU. They reasoned that if the perspective of entry into the EU was as vague as it seemed, why should Turkey be prepared to make major concessions now with regards to its foreign and security policy? And indeed, it is not unthinkable that the wavering attitude of the European Council about mentioning a date for the opening of accession negotiation will reinforce the position of those who have a euro-sceptic attitude. There is reason for concern that the more headway the euro-sceptics in Turkey will gain, the more difficult it will become for the euro-friendly forces to jump the hurdles put into place by the EU, most importantly, the implementation of the reforms required as a condition for even the opening of accession negotiations and the settlement of the Cyprus problem.

Nevertheless, the AKP government has tried to meet the expectations of the EU by encouraging Mr. Denktash to be accommodating. For the first time in history the firm leader of Turkish Cyprus was criticised by the government of the "motherland". If President Denktash had not been able to count on the support from the military and diplomatic circles in Turkey, he would probably have been forced to give in, the more so because he was facing growing pressure within his own constituency. On 27 November 2002, 12 000 Turkish Cypriots took part in demonstrations, on 26 December 30 000 did so again, and on 14 January, 50 000 took to the streets, demanding not just negotiations on the Annan Plan but even the replacement of President Denktash with someone who did not have his reputation for intransigence. However, and in all fairness, it must be noted that the important counter-demonstrations in support of Denktash were neglected by the international press.

What did Denktash criticise in the Annan Plan? The territorial concessions and free movement rights to the Greek Cypriot islanders were considered overly generous. The reduction of Turkish troops would have

implied security risks for the Turkish Cypriots. Greek Cypriots would have been able to undermine the autonomy of the Turkish-Cypriot component state.<sup>6</sup> Also, the Plan did not consider that this component state would not be economically viable. In fact, the Turkish Cypriot preference has been for a solution of the conflict that was based on a high measure of independence from the Greek Cypriots, and they also advocated, at least *ad interim*, diplomatic recognition of the Turkish Republic of Northern Cyprus as a necessary step towards a solution.<sup>7</sup>

### 3. The Tacit Objections of the Greek Cypriots

It is usually overlooked that the Annan Plan also encountered strong reservations from the Greek Cypriot side. By contrast to the Turkish Cypriots they have chosen not to voice them all too openly. However, Greek Cypriots equally criticised the concessions to the "other side" as going too far. The promise of equality of treatment was contrary to the widely held view that a political system in Cyprus should reflect the demographic characteristics of the island and therefore, the Greek Cypriot majority. The Turkish Cypriot veto on political decisions reminded the Greek Cypriots too much of the beginning of the 1960s, when the decision-making process was paralyzed more than once. The rotation of the Presidency, cherished by the Turkish Cypriots, equally met with resistance. Opinion polls<sup>8</sup> have shown that the Greek Cypriots were quite critical of the Annan plan. Many regarded the limitations on the freedom of movement and the question of property acquisition as going too far. Many Gre-

6 See the comments by Michael Stephen further below.

7 See further „The Annan Plan – Myths and Realities”. Paper by Ergün Olgun (Under-Secretary, TRNC Presidency), Istanbul 17 July 2003.

8 According to the Macedonian press agency (MPA) report of 16 August 2003, in November 2002, the majority of Cypriots and Greeks, 71% and 53.8% respectively, said “no” to the Annan plan, while only 27% of Cypriots and 45.3% of Greeks said “yes”. 74% of Cypriots believed that the Annan proposal is not viable and 55.4% of Greeks agree with them. 66% of Cypriots and 76.3% of Greeks were not prepared to accept the Annan solution in order for Cyprus’ to be incorporated to the EU. 73.3% of Greeks believed that the solution is unfair, and 21.7% believed it is fair. The results of the poll were published in the newspaper “Eleftheros Typos”. [www.mpa.gr/article.html?doc\\_id.=307890](http://www.mpa.gr/article.html?doc_id.=307890). See also the results of the Cypriot daily Simerini of 11 December 2002 posted at [www.Agamemnon.Dabsol.Co.uk/Opposition.htm](http://www.Agamemnon.Dabsol.Co.uk/Opposition.htm).

ek Cypriots still live in the expectation that unification must come with the unlimited right to move to the North, to buy property and to establish oneself. And this is a sore point for the Turkish Cypriots, who fear that the North would be bought up by the well-to-do islanders of the South.

The Greek Cypriot diplomacy escaped scrutiny because it was Denktash who pulled the plug on the initiative. But a closer look reveals, not for the first time, how far apart the expectations of the peoples were, and what is more, how both groups think selfishly, in terms of their own perceived interests. Under these conditions a project for the common good has little or no chance, even when there is the "carrot" of accession to the EU. Even though the Annan plan contained all ingredients for compromise on a common Cypriot State and merely had to be adapted in one or the other respect, one has to want it, one has to see a perspective in it with something to gain as compared to the current partition of the island. And that is most likely what is currently missing on both sides of the Green line. Whether this will change does not only depend on the preparedness of Rauf Denktash to make greater concessions. It also depends on whether the Greek Cypriots can be trusted to resist the temptation –after accession– to bring about unification on their own terms. It is tempting to conclude that with the Annan Plan, somebody wrote a sensible plan without taking into account the realities on the ground.

### III Implications for the EU

One may ask, what does this all mean for the EU? The Copenhagen Summit resolved to take Cyprus into the European Union in 2004. For the time being, admission is only open to the southern part held by the Greek Cypriots. The application of the *acquis communautaire* cannot be extended to the Northern part of the island until the Council, upon recommendation of the Commission, unanimously<sup>9</sup> decides otherwise. This arrangement was intended to protect the EU and to counter the temptation to *de facto* and *de jure* extension the EU regulations and privileges to the northern part before the division of Cyprus has ended. Had the EU not taken such precautions, then a Greek Cypriot citizen could have called upon the European courts to enforce his rights to free movement and the freedom to acquire property in the north of the island, which would entail claims to

9 That is, including Greece and South Cyprus.

territorial jurisdiction which would be considered offensive by the Turkish Cypriots (see further below) . By resolving that for the time being the *acquis* will not apply to the North, the EU hopes to be able to prevent the potentially explosive progressive inclusion of the Turkish Cypriot part without settlement. But the very fact that the heads of state and government adopted these precautions is a sign that the EU needs to brace itself and be prepared to be drawn into civil strife. Henceforth it will no longer be able to play the part of the unaffected third party.

So far, the accession prospect has not been a means for settling the conflict, but what has not happened may still come. The Commission's Cyprus policy is as always based on the view that Cyprus' s accession to the EU is creating favourable conditions for the two communities to reach a comprehensive settlement of the Cyprus problem. The recent easing of restrictions in the contacts and communication between Greek and Turkish Cypriots has demonstrated that the two communities may yet live together in a reunited island within the Union. At the same time, however, the EU still requires comprehensive settlement. This in turn influences the relations between the EU and Turkey. (See below.) Cyprus will not be the obstacle to the EU's eastern enlargement which many people feared it could be, but in order to obtain this, the accession of Cyprus and Turkey had to be somewhat linked by allowing an opening for Turkey to insist on membership.

On 19 February 2003 the European Commission gave its favourable opinion on the accession of ten new candidate countries, including Cyprus.<sup>10</sup> On 9 April the European Parliament declared itself in favour of the accession of Cyprus. One week later, on 16 April, the Republic of Cyprus signed unilaterally the accession treaty, in name of the whole island. This has opened up an entire range of questions about the implementation of the Treaty and the future ways of integrating North Cyprus into the EU.<sup>11</sup> The subsequent section of this paper will address these issues.

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10 COM (2003) 79 final.

11 Abdelkhaleq Berramdane, Chypre entre adhésion à l'Union européenne et réunification , 2003/1 *Revue trimestrielle de droit européen*, 87-108, at 105.



## 1. Implementation of the Treaty of Accession

### a) Ratification

In the second week of August 2003 the Parliament of the Republic of Cyprus ratified the Accession. The Government of the Republic of Cyprus does not represent the Turkish Cypriots,<sup>12</sup> who, moreover, under the abrogated Constitution and the 1960 Treaty of Guarantee have a right of veto in external relations except when Cyprus, Greece and Turkey simultaneously adhere to a Union or alliance with other states. Under the Vienna Convention on the Law of Treaties, this would make the unilateral accession invalid.<sup>13</sup>

Article I of the 1960 Cyprus Treaty of Guarantee provides that the Republic of Cyprus “.....undertakes not to participate, in whole or in part, in any political or economic union with any State” whatsoever. Article II of the Treaty provides that Greece, Turkey and the United Kingdom “... undertake to prohibit, so far as concerns them, any activity aimed at promoting, directly or indirectly, either union of Cyprus with any other State or partition of the Island.” It would therefore be illegal, as Prof. Maurice Mendelson QC has explained,<sup>14</sup> for Cyprus to join the EU without the consent of all parties to the Cyprus Treaty of Guarantee (including Turkey). It would be open to the Turkish Government to challenge the legality of Cyprus accession in the form of an action against the UK and/or Greece in the International Court of Justice in The Hague, but the court has no compulsory jurisdiction and the prospective Defendants may not agree to submit themselves to the court. It is possible that an action could be bro-

12 The Turkish Cypriots maintain that the Republic of Cyprus was destroyed in 1963, and that the Greek Cypriots represent only themselves. This issue has never been adjudicated on its merits in any international court.

13 See Paolo Bargiacchi, „The Island of Cyprus Within The International Legal System and Its Admission into The European Union”, paper given at the Colloquium „Legal Implications of Peace in the Mediterranean, Antalya, 17 July 2002.

14 Written opinions (ISBN 0-9540675-1-7) dated 6th June 1997 (UN doc. A/51/951-S/1997/585) 21st July 1997, 12th September 2001 and 3rd March 2002 in which he considers in detail the arguments to the contrary advanced in joint written Opinions obtained by the Greek Cypriot Administration from Professors Crawford, Hafner and Pellet. See also Prof. Peter Perenthaler, Univ. of Innsbruck, Austria. Paper delivered at seminar in Jerusalem 1998 agreeing with Prof. Mendelson.

ught in the European Court of Justice. However, in view of its decision in the *Anastasiou* case<sup>15</sup> preventing fruit and vegetable exports from Northern Cyprus to the EU, as one British lawyer has put it „I have no confidence that the Court would decide the case free from political considerations.”<sup>16</sup> One option would be to ask the UN Secretary General to put a question to the International Court of Justice. Needless to say, this does not resolve the Cyprus problem.

### **b) Institutional implications**

The number of members of parliament and the number of votes in the Council which the Nice Treaty gives to Cyprus is not being contested, although it is likely that these numbers could be attacked for infringement of the principle of democracy and institutional balance.<sup>17</sup>

### **c) Territorial application**

The Treaty of 16 April 2003 provides four different territorial zones:

i) the whole island is under the jurisdiction of the European Community and the Union; ii) the zones which are under UK sovereignty enjoy a privileged status in the sense that not all EC rules apply there; iii) the demarcation line of the UN peacekeeping force will also have a special derogation régime; iv) finally, the TRNC is exempted in the sense that the application of the Community *acquis* is suspended as long as the Cyprus problem has not received a comprehensive settlement. (Article 1 para 1 of protocol 10 to the Act of Accession.)

## **2. Future extension of the application to the TRNC**

Article 1 paragraphs 1 and 4 provide for the lifting of the suspension of the *acquis communautaire* in the north of the island after a solution

15 Case C-432/92, R. v. Minister of Agriculture, Fisheries and Food *ex parte* Anastasiou, Judgement of 5 July 1994, ECR I-3087.

16 Michael Stephen, „Cyprus After Annan”. Manuscript, London 2002.

17 Berramdane, loc. Cit, at 106.

is found. This decision is to be taken by unanimity in the Council and therefore, of course, with the approval of Greece and the Greek Cypriots. The application of the *acquis* can be facilitated by implementing measures, in particular, financial support by the EU, via a procedure yet to be established in favour of the Turkish Cypriot population, intended to allow the North to catch up with the South. These provisions are clearly meant to be a carrot inviting the Turkish Cypriots to fall into line.<sup>18</sup> The approval of Greece and the Greek Cypriots may induce the latter to try and seek a solution on their own terms, and this in turn may affect the good relations between the EU and Turkey.

### 3. The Relations Between the EU and Turkey – Cyprus as a Bargaining Chip

The Copenhagen Summit and the decision to admit ten new members into the EU, including Cyprus, have induced the Member States to be more forthcoming towards Turkey and admit that they would consider the possibility of opening accession negotiations. It was resolved that in December 2004 the European Council would proceed to an evaluation of the progress by Turkey in the implementation of the Copenhagen criteria, and if the outcome is positive, it will open accession negotiations with Turkey without further delay. The mellowing of the EU no doubt has had to do not only with Erdogan's lobbying (see above) but also with the fact that Cyprus cannot be integrated into the EU without the collaboration of Turkey. As a result, this small divided island has served both the EU and Turkey to further their geo-strategic aims even if apparently they do not fully coincide.

Opinions in the European Union are divided on the issue of the desirability of Turkish accession. Turkey is tremendously important for the

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18 The Greek Cypriot Government, and several institutions outside Cyprus, currently apply a system of sanctions against the Turkish Cypriots - which is partially offset by Turkish measures in favour of TRNC residents., a situation which does not contribute to the creation of a climate of confidence. For a report on the effects of sanctions on the Turkish-Cypriots, see, inter alia, Marketa Geislerova, Report on Cyprus from the Round Table "Living Together: Sharing the Canadian Experience", Banff, Alberta - March 28-30, 2001, [www.Ecommons.net/ccfpd-europe..](http://www.Ecommons.net/ccfpd-europe..) The legality of such measures have never been investigated by an international body, nor do there exist comprehensive studies on their effectiveness.

EU, but Turkey's accession to the EU is extremely controversial. Advocates of Turkey's entry into the EU argue that it would be in the Union's advantage because it would:

- Help prevent a "clash of civilizations" by showing that Christians, Muslims and others can live together peacefully in the European Union;
- strengthen the "model Turkey", with its secular and pro-western basis as an example to follow by its neighbouring countries,
- enhance the EU's capacity to gain global influence;
- support reformists in Turkey and prevent growing influence of anti-modern and Islamic tendencies;
- facilitate the integration of the Turkish population living in current EU member states by confirming that Turkey is a European state;
- secure Europe's energy supply. Turkey is an important transit area for commodities and oil.<sup>19</sup> For such reasons, among others, integration between Turkey and the EU is encouraged by the United States.<sup>20</sup>

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19 The Middle East possesses three quarters of the proven world oil reserves, which end 2001 amounted to 908 billion barrels. Bernard Poignant, „Janvier 2003: la Turquie et les frontières de l'Union”, [www.herodote.net/editorial/0301.htm](http://www.herodote.net/editorial/0301.htm).

20 Abdelkhaleq Berramdane, *op. Cit.* at 103. Poignard points out that the USA's position dates back to the cold war and is formed especially at the time of the Cuban missile crisis of October 1962, when it discovered that missiles were being installed in that island with a range that could reach US targets. They had Germany as an ally but needed Turkey too, and therefore, its association with the western camp, which was then largely economic. In the 1990s Turkey was important as the eastern flank of Iraq and so the Europeans who were proceeding to an ever closer union were invited to keep Turkey on board. This explains the US support for the customs union agreement, the deposition of Turkey's applications for membership in 1998, the proposed date in 2002 for an appointment in 2004. „Il ne faut pas chercher là-dedans un intérêt quelconque pour l'Union européenne, son intégration, son modèle politique et social, ses capacités de diplomatie et de défense communes.” Bernard Poignant, *op. Cit.* See also Joaquin Roy, „La incomprensión de la UE en los EU”, 15 Oct 2002, *ElNuevoHerald. Com*, <http://www.miami. Com/mld/elnuevo/news/opinion/4361602.htm>

Opponents argue that Turkey's accession would:

- undermine the EU's "political finality", as it would prevent the EU from becoming a political union;
- weaken the establishment of a European identity;
- endanger the secular basis of Europe by supporting Islamic tendencies;
- transform the EU in a region without frontiers and encourage Russia, the Ukraine, Belarus, Morocco and other countries to apply for membership;
- require too many security guarantees from the EU, as Turkey is located in highly insecure surroundings;
- bring more Turkish migrants into the current member States. Free movement of persons within the EU might increase the Turkish immigrant population in Germany from 2 to 3, 5 million in thirty years time<sup>21</sup>;
- "outstretch" the EU's capacity to offer budget transfers in the framework of its structural policy; and
- transform Turkey into a politically dominant actor within the Union. Under present rules, Turkey would have the greatest number of Council votes among all of the acceding countries. It would have as many votes as the largest countries of the EU (Germany, France and the UK). In the European Parliament Turkey would have as many seats as Germany has. At the same time, in the short and medium term, most of the economic effects of the accession will be felt by Turkey.

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21 While people do not move much within Europe (Adrian Favell, „Why Europeans Do Not Move”, Paper presented at the EUSA Conference, Nashville, 27-29 March 2003), a study by Deutsche Bank Research predicts that large-scale migration will occur from central and eastern Europe to the west. Up to three million people could move from eastern to Western Europe by 2015. „UK to Profit Significantly from EU Enlargement”, BBC news release, 7 August 2003. The study cites wage differentials as the main stimulus to migrate. Meanwhile, many researchers warn that the populations in the old fifteen EU members, are aging and shrinking, and these countries will have to compete for human resources in the near future. (See UN Population Division. Department of Economic and Social Affairs, Replacement Migration: Is it a Solution to Declining and Ageing Populations? New York 2000.) They may also want to diversify their minorities to create a balance.

Nevertheless, it is widely believed that the main obstacles to the Turkish accession are not economic, but political. It is often suggested that historical experience prevents Turkey from eliminating the decisive political role of the military, from giving the Kurds and other minorities cultural rights and from upholding basic human rights.<sup>22</sup> The collaboration between the EU and Turkey for the purpose of bringing about reforms is dealt with elsewhere in this book.<sup>23</sup>

#### 4. Interim conclusions

The above analysis gives rise to the following conclusions:

1. Cyprus accession was successfully used as a vehicle for improving the relations between the EU and Turkey in the short term.
2. So far, the lure of accession has not succeeded in bringing about a unification of the island, it would seem, because the Greek Cypriots and the Turkish Cypriots are not yet ready for this.
3. This gives rise to the accession of a divided Cyprus, a situation to which the current Turkish government might tacitly agree as long as it could hope to improve the prospect of its own accession.
4. It is possible that over time the trust between the parties on Cyprus improves. How long this may take is difficult to predict and it is also possible that it will not. In this connection it is worth noting that a preliminary report by the Brussels based Centre for European Policy Studies (CEPS) is cautiously optimistic:<sup>24</sup>

“... the political situation has become exceptionally fluid. As the

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22 See the chapter on Turkey elsewhere in this volume. See also, Harry Flam, *Politics and Economics of Turkish Accession*, CESifo Working Paper 983, March 2003, www.CESifo.De. See also Ganze Avci, “Putting the Turkish EU Candidacy into Context,” 7 *European Foreign Affairs Review* (2002), 91-110.

23 See the chapter by Harun Arıkan elsewhere in this volume.

24 Bruno Coppeters, Michel Huysseune and Michael Emerson, Nathalie Tocci, Marius Vahl, „European Institutional Models as Instruments of Conflict Resolution in the Divided States of the European Periphery”, CEPS Working Document No 195, July 2003. www.Ceps.Be.

Turkish Cypriot leader, Rauf Denktaş chose to open the frontier for the movement of persons, to which the people responded in large numbers. Parallels with the fall of the Berlin Wall have been suggested, but they may be premature. Nevertheless, the initiative has, for the first time, passed from the exclusive hands of the leaders to the people.”

This assessment was made in the context of an important study into the potential for supra-national and international settlement in secessionist conflicts at the periphery of the EU.<sup>25</sup> The study involves Cyprus, Montenegro and Serbia, Moldova-Transdnistria and Georgia- Abkhazia.<sup>26</sup> In all of these cases, conflict settlement is related, in the near future or in the long run, to the prospect of integration into a European framework expressed by the one or the other party. It is of course interesting to see how EU policy can help, in the long term, to overcome these difficulties, on its own or through collaboration with other actors on the international scene. It is clear that all these cases enjoy a degree of internationalisation and the involvement of the major powers.

5. There is a possibility that the EU's strategy with regard to Cyprus will backfire, for instance, if it appears that there is no basis for trust between Greek and Turkish Cypriots or if the EU does not handle the Turkish application for membership well. In that case we are not just talking about the loss of a small island or a part of it. Any form of escalation and the ensuing alienation between Turkey and the EU is to be avoided in view of the fact that it is a whole geostrategic area that is concerned.

#### IV Prospects for Solving the Cyprus Problem after Accession

If the Cyprus problem is not to be solved by force, any settlement requires the approval of the Turkish Cypriot leadership, which is in turn influenced by the people and by the amount of protection they can expect from Turkey. Turkey is inclined to protect the Turkish Cypriots, the more

25 Ibid, at p. i.

26 The above-mentioned CEPS study reports that „Moldova-Transdnistria is on the edge of the Europeanization process especially as Romania's accession prospects improve.... Georgia-Abkhazia is furthest away from the concept of Europeanization, but still has certain European aspirations....” Ibid, at p. 11.

so because its own geostrategic interests are at stake (including its orientation towards Europe). Any negotiated settlement between the Greek and Turkish Cypriots would invariably start from the ill-fated UN proposals and therefore, a study of the main issues is inescapable. According to Cyprus expert and former UK Member of Parliament Michael Stephen,<sup>27</sup> there are serious problems with the Annan plan, including the following:

### 1. Property

Currently, Turkish Cypriot properties in the South are being occupied by Greek Cypriots and vice versa. If an overall settlement is to have the best chance of being accepted, it is important to minimize opportunities for disagreement, and litigation in the local courts or the European Courts. It is essential that forced evictions and relocation of families are kept to the minimum. Apart from the fact that people in Cyprus have suffered much disruption to their lives over the years and should be entitled to security and stability for their future, eviction would lessen the chance of acceptance should a referendum on the settlement be organised. In the view of Stephen,<sup>28</sup> the right way to approach the property issue is to accept that people left their old homes twenty-eight and more years ago, and have re-adjusted to their present circumstances. Many have already been compensated in cash or property out of local resources or international aid. An agreement in 1975 between the two peoples has formalised this exchange of populations, and so much has happened in the intervening period that it is unrealistic and inhuman to attempt to unravel these events and restore people to the *status quo ante*. In the view of Stephen, justice can be achieved by the payment of compensation and dispossession of property for the public good. Among others, relocation of persons would also cause serious security problems. Allegations of espionage, sabotage, or terrorism real or imagined would be inevitable, and would cause serious tension and even a renewal of violence. While Turkish Cypriots expect to be left with a viable territory in which they can support themselves, they believe that the Greek Cypriot religious and poli-

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27 Michael Stephen LL.M. is barrister in London. He was a member of the UK Parliament 1992-97 and Assistant Legal Adviser to the UK Ambassador to the UN for the 25th General Assembly. He is the author of *The Cyprus Question* (London, July 2001).

28 Speech to the Turkish Parliamentary Association at the Turkish Parliament in Ankara on 17th January 2003.



tical leadership does not accept it because they want to make Cyprus a Greek island, and they think the EU will help them to do it.

## 2. Representation in a Cyprus constitution

The Turkish Cypriots accept that the new Cyprus should be a state with international personality, and are willing to look at a variety of ways in which the fundamentally different interests of its two peoples could be accommodated. However, what has happened to the Turkish Cypriot community in the 1960s was nothing short of ethnic cleansing before that phrase came into vogue in the Western media.<sup>29</sup> For this reason, the bottom line of the Turkish Cypriot leadership is that neither of the two peoples should have the legal power or the practical potential to dominate the other. The Greek Cypriots favour strong federal institutions in which their superior numbers and their superior wealth would give them a decisive advantage. From the Turkish Cypriot point of view, although the legislative powers in the Annan plan are ostensibly democratic, they do not give Turkish Cypriots many votes, and they fear that it would take only a very few Turkish Cypriots to be intimidated, bribed, or misled into casting their vote for a measure which could have far reaching effects. As a result, the proposals for a more proportional representation are difficult to accept.<sup>30</sup>

## 3. Other aspects

A detailed arrangement about the political questions is all the more necessary because there is not much scope in leaving essential items to a supreme court of Cyprus. Cases in the European Court of Justice and the European Court of Human Rights (in particular, *Loizidou*<sup>31</sup> and *Anastasiou*<sup>32</sup>) have led the Turkish Cypriots to distrust European judges.

The principle of geographical adjustments is not being contested.

29 See „The Genocide Files” by the British journalist Harry Fitzgibbons, who was based in Cyprus at the time.

30 Michael Stephen, speech to the Turkish Parliamentary Association at the Turkish Parliament in Ankara on 17th January 2003.

31 See Zaim Necatigil, *The Loizidou Case: A critical Examination*. Centre for Strategic Research, SAM Papers 8/99 (ISSN 1302-3845) . Ankara, November 1999.

32 Case C-342/92, see *supra*.

However, as stated before, it is difficult for the TRNC to proceed without public support. For this reason, in the view of Stephen, Varosha could be negotiated but not the agricultural hinterland of Guzelyurt, and not the land immediately east of Lefkosa.<sup>33</sup>

## V Evaluation

The Cyprus ouvertures have brought about a small step in the improvement of the relations between the EU and Turkey. It has not yet served the economic interest of the TRNC (dogged, moreover by a system of economic sanctions perceived as unjust) nor contributed to the settlement of the Cyprus problem. Perhaps the remaining questions can be overcome with time and a settlement can be found,<sup>34</sup> but this is by no means a foregone conclusion. The accession by Turkey to the European Union might help. Whether it is worth for the EU to pay this price is difficult to assess. A different approach would be to consider that matter on its own merits.

## VI Conclusion

In conclusion, the Cyprus issue might yet be resolved through the accession of Turkey into the Union, but the prospects for this are not clear. Consequently, the situation in Cyprus remains unsatisfactory and entry into the EU alone is unlikely to change the status quo.

## Appendix

### Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem

(excerpt)

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33 Michael Stephen, speech to the Turkish Parliamentary Association at the Turkish Parliament in Ankara, January 17, 2003.

34 At the annual TUNAECS conference in Istanbul, 25-27 September 2003 there was considerable interest in a proposal by Nihat Akyol for a temporary constitutional regime for Cyprus featuring innovative euro-regions with free circulation on an experimental basis which could be laid down in an amendment to the 1960 Treaty.

## FOUNDATION AGREEMENT

- i. *Affirming that Cyprus is our common home and recalling that we were co-founders of the Republic established in 1960*
- ii. *Resolved that the tragic events of the past shall never be repeated and renouncing forever the threat or the use of force, or any domination by or of either side*
- iii. *Acknowledging each other's distinct identity and integrity and that our relationship is not one of majority and minority but of political equality*
- iv. *Deciding to renew our partnership on that basis and determined that this new partnership shall ensure a common future in friendship, peace, security and prosperity in an independent and united Cyprus*
- v. *Underlining our commitment to international law and the principles and purposes of the United Nations*
- vi. *Committed to respecting democratic principles, individual human rights and fundamental freedoms, as well as each other's cultural, religious, political, social and linguistic identity*
- vii. *Determined to maintain special ties of friendship with, and to respect the balance between, Greece and Turkey, within a peaceful environment in the Eastern Mediterranean*
- viii. *Looking forward to joining the European Union, and to the day when Turkey does likewise*
- ix. *Welcoming the Comprehensive Settlement freely reached by our democratically elected leaders on all aspects of the Cyprus Problem, and its endorsement by Greece and Turkey, along with the United Kingdom*

*We, the Greek Cypriots and the Turkish Cypriots, exercising our inherent constitutive power, by our free and democratic, separately expressed common will adopt this Foundation Agreement.*

### Article 1 The new state of affairs

1. This Agreement establishes a new state of affairs in Cyprus.
2. Upon entry into force of this Agreement, the treaties listed in this Agreement shall be binding on Cyprus, and the attached <common state> legislation indispensable for the functioning of the <common state> shall be in force.
3. The Treaty of Establishment, the Treaty of Guarantee, and the Treaty of Alliance remain in force and shall apply *mutatis mutandis* to the new state of affairs. Upon entry into force of this Agreement, Cyprus shall sign a Treaty with Greece, Turkey and the United Kingdom on matters related to the new state of affairs in Cyprus, along with additional protocols to the Treaties of Guarantee and Alliance.
4. Cyprus shall sign and ratify the Treaty of Accession to the European Union.
5. Cyprus shall maintain special ties of friendship with Greece and Turkey, respecting the balance established by the Treaty of Guarantee and the Treaty of Alliance and this Agreement, and as a European Union member state shall support the accession of Turkey to the Union.
6. Any unilateral change to the state of affairs established by this Agreement, in particular union of Cyprus in whole or in part with any other country or any form of partition or secession, shall be prohibited. Nothing in this Agreement shall in any way be construed as contravening this prohibition.

### Article 2 The State of Cyprus, its <common state> government, and its <component states>

7. The status and relationship of the State of Cyprus, its <common state> government, and its <component states>, is modeled on the status and relationship of Switzerland, its federal government, and its Cantons. Accordingly:
  - a. Cyprus is an independent state in the form of an indissoluble partnership, with a <common state> government and two

- equal <component states>, one Greek Cypriot and one Turkish Cypriot. Cyprus has a single international legal personality and sovereignty and is a member of the United Nations. Cyprus is organized under its Constitution in accordance with the basic principles of rule of law, democracy, representative republican government, political equality, bi-zonality, and the equal status of the <component states>.
- b. The <common state> government sovereignly exercises the powers specified in the Constitution, which shall ensure that Cyprus can speak and act with one voice internationally and in the European Union, fulfill its obligations as a European Union member state, and protect its integrity, borders and ancient heritage.
  - c. The <component states> are of equal status. Within the limits of the Constitution, they sovereignly exercise all powers not vested by the Constitution in the <common state> government, organizing themselves freely under their own Constitutions.
8. The <component states> shall cooperate and co-ordinate with each other and with the <common state>, including through Cooperation Agreements, as well as through Constitutional Laws approved by the legislatures of the <common state> and the <component states>. In particular, the <component states> shall participate in the formulation and implementation of policy in external and European Union relations on matters within their sphere of competence, in accordance with Cooperation Agreements modeled on the Belgian example. The <component states> may have commercial and cultural relations with the outside world in conformity with the Constitution.
  9. The <common state> and the <component states> shall fully respect and not infringe upon the powers and functions of each other. There shall be no hierarchy between the laws of the <common state> and those of the <component states>. Any act in contravention of the Constitution shall be null and void.
  10. The Constitution of Cyprus may be amended by separate majority of the voters of each <component state>.

### Article 3 Citizenship

11. There is a single Cypriot citizenship. Special majority <common state> law shall regulate eligibility for Cypriot citizenship.
12. All Cypriot citizens shall also enjoy internal <component state> citizenship status. Like the citizenship status of the European Union, this status shall complement and not replace Cypriot citizenship. A <component state> may tie the exercise of political rights at its level to its internal <component state> citizenship status, and may limit the establishment of residence for persons not holding this status in accordance with this Agreement. Such limitations shall be permissible if the number of residents hailing from the other <component state> has reached 1% of the population in the first year and 20% in the twentieth year, rising by 3% every three years in the intervening period. Thereafter, any limitations shall be permissible only if one third of the population hails from the other <component state>.

### Article 4 Fundamental rights and liberties

13. Respect for human rights and fundamental freedoms shall be enshrined in the Constitution. There shall be no discrimination against any person on the basis of his or her gender, ethnic or religious identity, or internal <component state> citizenship status. Freedom of movement and freedom of residence may be limited only where expressly provided for in this Agreement.
14. Greek Cypriots and Turkish Cypriots living in specified villages in the other <component state> shall enjoy cultural and educational rights and shall be represented in the <component state> legislature.
15. The rights of religious and other minorities, including the Maronite, the Latin and the Armenian, shall be safeguarded in accordance with international standards, and shall include cultural and educational rights as well as representation in <common state> and <component state> legislatures.

## Article 5 The <common state> government

16. The <common state> Parliament composed of two chambers, the Senate and the Chamber of Deputies, shall exercise the legislative power:
- a. Each Chamber shall have 48 members. The Senate shall be composed of an equal number of Senators from each <component state>. The Chamber of Deputies shall be composed in proportion to population, provided that each <component state> shall be attributed no less than one quarter of seats.
  - b. Decisions of Parliament shall require the approval of both Chambers by simple majority, including one quarter of voting Senators from each <component state>. For specified matters, a special majority of two-fifths of sitting Senators from each <component state> shall be required.
17. The Office of Head of State is vested in the Presidential Council, which shall exercise the executive power:
- c. The Presidential Council shall comprise six members elected on a single list by special majority in the Senate and approved by majority in the Chamber of Deputies. The composition of the Presidential Council shall be proportional to the population of the two <component states>, though no less than one-third of the members of the Council must come from each <component state>.
  - d. The Presidential Council shall strive to reach decisions by consensus. Where it fails to reach consensus, it shall, unless otherwise specified, take decisions by simple majority of members voting, provided this comprises at least one member from each <component state>.
  - e. The members of the Council shall be equal and each member shall head a department. The heads of the Departments of Foreign Affairs and European Union Affairs shall not come from the same <component state>.
  - f. The offices of President and Vice-President of the Council shall rotate every ten calendar months among members of

the Council. No more than two consecutive Presidents may come from the same <component state>. The President, and in his absence or temporary incapacity, the Vice-President, shall represent the Council as Head of State and Head of Government. The President and Vice-President shall not enjoy a casting vote or otherwise increased powers within the Council.

g. The [executive heads]<sup>35</sup> of the <component states> shall be invited to participate without a vote in all meetings of the Council in the first ten years after entry into force of the Agreement, and thereafter on a periodical basis.

18. The Central Bank of Cyprus, the Office of the Attorney-General and the Office of the Accountant-General shall be independent.

#### **Article 6 The Supreme Court**

19. The Supreme Court shall uphold the Constitution and ensure its full respect.

20. It shall be composed of nine judges, three from each <component state> and three non-Cypriots.

21. The Supreme Court shall, *inter alia*, resolve disputes between the <component states> or between one or both of them and the <common state>, and resolve on an interim basis deadlocks within the institutions of the <common state> if this is indispensable to the proper functioning of the <common state>.

#### **Article 7 Transitional <common state> institutions**

22. The <common state> institutions shall evolve during transitional periods, after which these institutions shall operate as described above.

23. Upon entry into force of this Agreement, the leaders of the two sides shall become Co-Presidents of Cyprus for three years. The Co-Presidents shall exercise the executive power during the first

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35 **Observation:** Terminology to be adjusted when the governmental structures of the <component states> are decided.



- year, assisted by a Council of Ministers they shall appoint. For the following two years, the executive power shall be exercised by a Council of Ministers elected by Parliament, and the Co-Presidents shall together hold the office of Head of State.
24. <component state> legislatures to be elected within 40 days of entry into force of this Agreement shall each nominate 24 delegates (reflecting the political composition of their legislature) to a transitional <common state> Parliament to operate for one year.
25. A transitional Supreme Court shall be appointed by the Co-Presidents for one year.

### Article 8 Demilitarization

#### 26. Bearing in mind that:

- h. The Treaty of Guarantee, in applying mutatis mutandis to the new state of affairs established in this Agreement and the Constitution of Cyprus, shall cover, in addition to the independence, territorial integrity, security and constitutional order of Cyprus, the territorial integrity, security and constitutional order of the <component states>;
- i. The Treaty of Alliance shall permit Greek and Turkish contingents, each not exceeding [insert 4-digit figure] all ranks, to be stationed under the Treaty of Alliance in the Greek Cypriot <component state> and the Turkish Cypriot <component state> respectively;
- j. Greek and Turkish forces and armaments shall be redeployed to agreed locations and adjusted to agreed levels, and any forces and armaments in excess of agreed levels shall be withdrawn;
- k. There shall be a United Nations peacekeeping operation to monitor the implementation of this Agreement and use its best efforts to promote compliance with it and contribute to the maintenance of a secure environment, to remain as long as the government of the <common state>, with the concurrence of both <component states>, does not decide otherwise;

- l. The supply of arms to Cyprus shall be prohibited in a manner that is legally binding on both importers and exporters; and
  - m. A Monitoring Committee composed of the guarantor powers, the <common state>, and the <component states>, and chaired by the United Nations, shall monitor the implementation of this Agreement,
- Cyprus shall be demilitarized, and all Greek Cypriot and Turkish Cypriot forces, including reserve units, shall be dissolved, and their arms removed from the island, in phases synchronized with the redeployment and adjustment of Greek and Turkish forces.
- 27. There shall be no paramilitary or reserve forces or military or paramilitary training of citizens. All weapons except licensed sporting guns shall be prohibited.
  - 28. Neither <component state> shall tolerate violence or incitement of violence against the <common state>, the <component states>, or the guarantor powers.
  - 29. Cyprus shall not put its territory at the disposal of international military operations other than with the consent of Greece and Turkey.

#### **Article 9 boundaries and territorial adjustment**

- 30. The territorial boundaries of the <component states> shall be as depicted in the map which forms part of this Agreement.
- 31. Areas subject to territorial adjustment which are legally part of the Greek Cypriot <component state> upon entry into force of this Agreement, shall be administered during an interim period no longer than three years by the Turkish Cypriot <component state>. Administration shall be transferred under the supervision of the United Nations to the Greek Cypriot <component state> in agreed phases, beginning 90 days after entry into force of this Agreement with the transfer of administration of largely uninhabited areas contiguous with the remainder of the Greek Cypriot <component state>.

32. Special arrangements shall safeguard the rights and interests of current inhabitants of areas subject to territorial adjustment, and provide for orderly relocation to adequate alternative accommodation in appropriate locations where adequate livelihoods may be earned.

### Article 10 Property

33. Claims by property owners dispossessed by events prior to entry into force of this Agreement shall be resolved in a comprehensive manner in accordance with international law, respect for the individual rights of dispossessed owners and current users, and the principle of bi-zonality.
34. In areas subject to territorial adjustment, properties shall be reinstated to dispossessed owners.
35. In areas not subject to territorial adjustment, the arrangements for the exercise of property rights, by way of reinstatement or compensation, shall have the following basic features:
- n. Dispossessed owners who opt for compensation or whose properties are not reinstated under the property arrangements shall receive full and effective compensation on the basis of value at the time of dispossession plus inflation;
  - o. Current users, being persons who have possession of properties of dispossessed owners as a result of an administrative decision, may apply for and shall receive title if they agree in exchange to renounce their title to a property, of similar value and in the other <component state>, of which they were dispossessed;
  - p. Current users may also apply for and shall receive title to properties which have been significantly improved provided they pay for value in original condition;
  - q. There shall be incentives for owners to sell, lease or exchange properties to current users or other persons from the <component state> in which a property is located;
  - r. Properties not covered by the above shall be reinstated five

years after entry into force of this Agreement (three years for vacant properties), provided that no more than X% of the area and residences in either <component state> and Y%<sup>38</sup> in any given municipality or village (other than villages specifically designated in this Agreement) shall be reinstated to owners from the other <component state>; and

- s. Current users who are Cypriot citizens and are required to vacate property to be reinstated shall not be required to do so until adequate alternative accommodation has been made available.
36. Property claims shall be received and administered by an independent, impartial Property Board, composed of an equal number of members from each <component state>, as well as non-Cypriot members. No direct dealings between individuals shall be necessary.

#### **Article 11 Reconciliation Commission**

37. An independent, impartial Reconciliation Commission shall promote understanding, tolerance and mutual respect between Greek Cypriots and Turkish Cypriots.
38. The Commission shall be composed of men and women, comprising an equal number of Greek Cypriots and Turkish Cypriots, as well as at least one non-Cypriot member, which the Secretary-General of the United Nations is invited to appoint in consultation with the two sides.

#### **Article 12 Past acts**

39. Any act, whether of a legislative, executive or judicial nature, by any authority [...] whatsoever, prior to entry into force of this Agreement, is recognized as valid and, provided it is not inconsistent with or repugnant to any other provision of this Agreement, its effect shall continue following entry into force of this Agreement. No-one shall be able to contest the validity of such acts by reason of what occurred prior to entry into force of this Agreement.

40. Any claims for liability or compensation arising from acts prior to this Agreement shall, insofar as they are not otherwise regulated by the provisions of this Agreement, be dealt with by the <component state> from which the claimant hails.

### **Article 13 Entry into force and implementation**

41. This Agreement shall come into being at 00: 00 hours on the day following confirmed approval by each side at separate simultaneous referenda conducted in accordance with the Agreement.
42. Upon entry into force of this Agreement, there shall be ceremonies throughout the island at which all flags other than those prescribed in the Constitution are lowered, the flags of Cyprus and of the <component states> raised in accordance with the Constitution and relevant legislation, and the anthems of Cyprus and of the <component states> played.
43. Upon entry into force of this Agreement, the Co-Presidents shall inform the United Nations that henceforth the membership rights and obligations of Cyprus in the United Nations shall be exercised in accordance with the new state of affairs. The agreed flag of Cyprus shall be raised at United Nations Headquarters.

This Agreement shall be implemented in accordance with the binding timeframes laid down in the various parts of the Agreement and reflected in the calendar of implementation.

[...]

[Annexes omitted]

