

A BRIEFING ON CYPRUS

A YEAR AFTER THE REFERENDUM—A YEAR AFTER THE EU ACCESSION

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This paper will address the following questions:

- a) Why the decisive Greek Cypriot “no” and the Turkish Cypriot “yes” votes in the April 24, 2004, referendum on Annan-5.
- b) Why did Kofi Annan insist on holding separate and simultaneous referenda on his plan?
- c) Current dimensions of American and British policy.
- d) What role did the EU play in last year’s failed talks.
- e) What can the EU do to help a Cyprus solution?
- f) Prospects for a solution and current threats.

The “Yes” and the “No” Votes: An Explanation.

Why did the Turkish Cypriot voters support Annan-5? The surprise is that those voting in the occupied areas did not give a higher percentage in favor of the plan despite the backing of Turkey.

- a) Annan-5 confirmed the continuation of the so called “TRNC” and expanded its veto rights throughout the proposed “United Republic of Cyprus”.
- b) The prospect of an economic future under EU assistance and Greek Cypriot subsidies.
- c) The exit of Raouf Denktash after decades of dictatorial politics

I want to emphasize that Turkish Cypriot approval of Annan-5 cannot be used as an excuse to upgrade the status of the occupied territories. Nothing has changed about the illegality of the “TRNC”. The recent admissibility decision by the European Court of Human Rights in the Myra Xenidi-Anesti case confirms this position. In addition, Kofi Annan indicated that rejection of the plan meant that the plan was off the table. Therefore, the unilateral implementation of Annan-5 by the

US/UK violates the spirit of the negotiation process and the assumptions of the UN Secretary General.

The Greek Cypriot “NO”:

I want to emphasize that the 76% against Annan-5 came from all age groups, political parties, and sexes.

Many myths have been promoted about the Greek Cypriot “no” vote by the United States, Britain, the Turkish Cypriot leadership and some “yes” supporters in the free areas of the Republic.

- a) “It was President Papadopoulos’ April 7, 2004, speech to the nation that turned the Greek Cypriot public against the plan”.
WRONG: US Embassy and other polls one week before the president’s speech showed a 70% negative vote among Greek Cypriot voters.
- b) “The Greek Cypriots do not want reconciliation and reunification”. WRONG! The “no” was a rejection of a process and its outcome. Both were seen as harmful to the Greek Cypriots and would lead to the dissolution of the internationally recognized Republic of Cyprus.
- c) “Advocates of the “YES” vote were kept off the airwaves”!
Greek Cypriot “yes” advocates were given full access on all TV and radio debates on Annan-5. It is true that TV stations (public and private) denied access to EU Commissioner for Enlargement Gunter Ferheugen and to the UN negotiator Alvaro DeSoto to promote the plan. The question is, should foreign diplomats have the power to interfere in the domestic politics of a free and independent democratic country?
Moreover, no Cypriot newspaper denied such access to any of the foreign interlocutors. They did not make an effort to present their views through the print media, even though

Cypriots are avid paper readers. I should also stress the fact that the US distributed some \$6 million to proponents of “yes” vote and their organizations by channeling money through UNOPS after approval by the US Embassy in Nicosia. No critic of the Annan Plan received a penny. The evaluation report by the Development Associates of Arlington, VA, in collaboration with Nathan and Associates, is quite revealing.

- d) The “no” vote has many “soft spots”. Therefore, cosmetic changes to Annan-5 will bring a major shift among Greek Cypriot voters and could produce a positive vote on the plan by a margin of 60-62% . According to a poll by the A. Lordos group “soft spots” exist in the views of Greek Cypriot voters, especially on issues like property and security. Those who believe that are in for another surprise. Our government must not be misled by such claims. Another failure to resolve the Cyprus problem will prove harmful to all involved.

Why did the Greek Cypriots so decisively said “NO” to Annan-5?

The failure of Annan-5 is a classic case of how not to negotiate especially with a small, proud, independent, European country. The negotiation process involved:

- a) an ultimatum like invitation.
- b) Rigid deadlines on a complicated legal text of more than 9,000 pages. Most of the final text from Annan’s arbitration did not make it to the UN web site until a day before the referendum!
- c) The use of arbitration, without SC approval, to settle the future of a free and democratic society.
- d) The use of threats (Tom Weston and Alvaro DeSoto) and bribes (donors conference, UNOPS)

I have spoken many times against the Annan Plan. People have asked, “weren’t any good points for the Greek Cypriots in Annan-5”? The answer is simple. Had Annan-5 been approved it would have been implemented as a whole, not just for the few points that may have favored the Greek Cypriots. The totality of the plan was seen as negative to Greek Cypriot interests and those of the Republic of Cyprus.

Let me provide at least 10 substantive reasons for the Greek Cypriot rejection of Annan-5:

- a) The plan denied to all Cypriots rights enjoyed by all other EU citizens (property, settlement). The plan prohibited recourse to European Courts on these issues by all Cypriot citizens. Moreover, all pending cases at the ECHR would be withdrawn and would be transferred to local courts.
- b) The plan included major derogations from EU law, European Court decisions, and from the European Constitution. These derogations affected only Cypriot citizens.
- c) The plan dissolved the internationally recognized Republic of Cyprus and replaced it by a loose confederation of two largely autonomous states. This new state would be known as the “United Republic of Cyprus”, with a new flag and anthem.
- d) The plan created a confederation even though it utilised the term “federation”. There was no hierarchy of laws, while central authority emanated from the so-called component states. Our own country abandoned its original confederal structure because it was unworkable. In 1783, we adopted a federal constitution containing a clear federal supremacy clause.
- e) The plan created dysfunctional governing institutions in the Executive, the Legislative and the Judicial branch, while foreign actors would cast deciding votes. This is unheard of in today’s democratic Europe.

- f) The cost of economic reunification would be born by the Greek Cypriots. The reunification cost has been estimated close to \$20b, while the donors conference pledged about \$750m! Turkey bore no financial liability for her actions in Cyprus since 1974.
- g) Citizenship and settlers: Nearly all the settlers would be granted citizenship or residence rights leading to citizenship. The central government would have limited control over future Turkish immigration. Those settlers opting to return to Turkey would be compensated by Cyprus. Even though Turkey systematically brought in the settlers to alter the demography of the two communities, it had no responsibility for their repatriation.
- h) The issue of security. This was a most important issue as Cyprus would be demilitarized; a strict arms embargo would be imposed; Cyprus would be excluded from the European Common Defense and Foreign Policy, while Turkish troops would remain in Cyprus even after the accession of Turkey to the EU with intervention rights in the Greek Cypriot component state. This is simply unheard of in 21st century Europe.
- i) At Turkey's request, Kofi Annan canceled the Cypriot ratification of the 1936 Montreux Treaty and acknowledged that Turkey questions other legal agreements concerning the continental shelf of Cyprus (economic agreement with Egypt). The reason is to be found in the prospect for gas and oil in the Cypriot continental shelf. Turkey follows the same tactics as in the dispute with Greece over the Aegean continental shelf. Turkey denies that islands have a continental shelf.

My question is, if Kofi Annan is the guardian of international law, how could he unilaterally cancel a ratified international treaty?

- j) The British were granted the right to unilaterally define territorial waters along their bases and to claim potential mineral rights. The British did not have these rights under the 1959 agreements. See the 2nd annex to the Additional Protocol to the 1959 Treaty of Establishment.

Let me conclude this section by stressing that the issue of the Montreux Treaty, the continental shelf, or the British bases have anything to do with the constitutional settlement on Cyprus. This shows how cynical and one sided this negotiation process was! In view of the previous remarks, anyone who believes that “cosmetic” changes will change the referendum outcome is in for another big surprise. Therefore, calling on Greek Cypriots to “rethink” their vote is fruitless, if not dangerous for the reunification of Cyprus.

Why did Kofi Annan call for referenda on his plan? His explanation was that the Cypriots would freely determine their own future. I will offer at least three other reasons for the referendum.

- a) Approval by referendum would remove the stigma of an imposed settlement, as was the case with the 1959 Zurich and London agreements that gave Cyprus its independence.
- b) Approval by referendum would legitimize the outcome of Annan’s arbitration and all the derogations from European law included in the plan. This would make any future adaptations to EU law virtually impossible.
- c) Approval by referendum would legitimize Turkey’s intervention rights even in the Greek Cypriot component state. This was another lesson learned from legal issues raised by the provisions of the 1959 independence agreements.

What was the EU’s role in the 2004 round of talks?

The EU Commissioner Gunter Ferheugen worked hand in hand with Tom Weston and Lord David Hannay to bring about Annan-5. The EU was invited to Buergenstock as an observer only and as a legitimizer of the settlement worked out by the UN, the US, and the UK. The EU was asked to accommodate major derogations from its laws prior to the admission of the Republic of Cyprus in the EU on May 1, 2004. The EU was given no voice in the negotiations over the Annan Plan. The EU accepted this arrangement in order not to inherit another political problem. Had the Cyprus problem been solved, it could become a step in improving European-American relations as the two sides cooperated with the UN to solve a long standing dispute. This was important in view of the tensions created by the 2003 US invasion of Iraq. If the EU did not cooperate with the US, the UK and the UN, it would have been left out of the game. I can tell you from personal experience that most EU and other diplomats were not familiar with details of the Annan plan.

I will now outline current dimensions of American and British policy on Cyprus. These remarks are based on discussions at the February 05' Wilton Park Larnaca conference and on Lord Hannay's 2004 book on Cyprus.

Lord Hannay makes clear how the US and the UK cooperated, guided and coordinated policy and tactics with the UN and defined the UN positions and ideas after fall of 2000. Earlier, I referred to the bribes and threats that faced the Greek Cypriots prior to the referendum. The US expressed "disappointment" with the Greek Cypriots and called on them to rethink their vote. In contrast, the US has expressed approval and appreciation to Turkey and the Turkish Cypriots for their favorable vote.

Since April 24, 2004, Washington has given mixed messages to the Greek Cypriots indicating that some limited changes in

Annan-5 are possible if the “balance” of the Annan Plan is not disturbed. The US insists that Annan-5 is still on the table and is the foundation of any settlement. This is a somewhat ironic position considering that the UN Secretary-General is the one offering his “good offices” to the parties on behalf of the UN. Clearly, US policy on Cyprus has been influenced by the overall relationship with Turkey and by Middle East policy considerations. Cyprus was the sacrificial lamb in an attempt to placate Turkey in Iraq.

Current American policy counts on internal partisan divisions in Cyprus, and relies on so-called Cypriot NGO’s (in most cases pro-Annan organizations funded by US money through UNOPS) to bring about “regime change” in the free areas! A “whisper campaign” has been launched against a freely elected president. Accusations have been levied by the US and Britain and have been repeated by Turkish Cypriot leaders and others that Cyprus should not be in EU. According to these arguments, the rejection of the Annan Plan was an indication of Greek Cypriot discrimination against the Turkish Cypriots. Much like in the case of Austria’s Heider, Papadopoulos and his government have no place in the EU.

Currently, the US and the UN insist that Cyprus must present its positions on desired changes to the Annan Plan in advance of any talks. Such changes must not disturb the plan’s balance. Greek Cypriots are also called upon to indicate what tradeoffs they will offer for any changes in the plan. This is an unusual diplomatic tactic. Asking only the Greek Cypriots to do so at a time when the new process has not been decided yet is simply unacceptable. It assumes that because the Turkish Cypriots said “yes”, the burden is on the Greek Cypriots to give more concessions for cosmetic changes to the plan.

All indications are that a new round of talks will be coming later this spring. This is why the Greek Cypriots must not entrap themselves as they did in January/February 04” by accepting talks on the basis of the Annan Plan along with the Secretary-General’s arbitration. Preliminary soundings are likely to occur after the April “elections” in the occupied areas. It is ironic that we show sensitivity to Turkish Cypriot political developments. Similar sensitivity was not shown either to president elect Papadopoulos in 2003 at the Hague, or towards Greece in Buergenstock after the Greek 2004 elections. The Turkish Cypriots and Turkey are also counting on Britain’s EU presidency (7/1-12/31/05) to make progress on Turkey’s EU accession talks and to upgrade the status of the “TRNC”. With the likelihood of a new round of talks, even Lord Hannay cautioned not to go into another round of talks unprepared and end up with another failure as in 2004.

Over the last few months, we have seen American and British attempts to upgrade the status of the occupied areas. American and British diplomats offer assurances that they are not seeking “de-jure” recognition of the “TRNC”. But the implied threat of such an action is used for bargaining purposes in the aftermath of the recent experience with the US recognition of the FYROM as “Republic of Macedonia”.

Current Anglo-American policy aims at the de-facto acknowledgement of the “TRNC”, its institutions, leaders, and procedures. This is the “acknowledgement” that Holbrooke asked the government of Cyprus for in 1998. His call was based on the 93’ Oslo precedent between Israel and the Palestinians.

This de-facto acknowledgement of the “TRNC” is justified by the Turkish Cypriot “yes” vote on Annan-5 and the need to end the isolation of the Turkish Cypriots. Let me briefly address both arguments. The isolation/ghetoization of the Turkish Cypriots is

result of the Turkish invasion, continuing occupation, the secession by the Turkish Cypriots from the Republic of Cyprus, and the forcible population transfers and expulsions carried out by Turkey in 1974/75. The Turkish Cypriot “isolation” is the result of international actions, including actions of the UN Security Council with the support of our government, and the decisions of European Courts.

The Turkish Cypriot economic distress is real but it has been caused by Turkey. Turkey imposed the Turkish Lira as the currency of the occupied areas after 1983. Turkey brought in Turkish bureaucrats to run the TC economy. We know how effective they had been managing the Turkish economy. Turkey also brought in the settlers.

Approval of Annan-5 by the Turkish Cypriots does not change the “TRNC”’s illegality, nor does it legitimize the unilateral implementation of Annan-5 in the so-called Turkish Cypriot “component state”. Annan indicated that if his plan was rejected by either side, the plan was off the table!

The US and Britain now promote the acknowledgement of the Turkish Cypriot leadership and their institutions, much as Holbrooke proposed in 98’. Washington and London also promote the implementation of the EU Trade and Financial Protocol for the “TRNC”. They also organized the “symbolic” visit by US businessmen to the occupied areas. For “convenience” this business delegation landed in the occupied and illegal Tymbou (Ercan) airport. Both countries also seek to open the ports and airports of “TRNC” under the guise of ending the “Turkish Cypriot isolation” while in reality playing Turkey’s card for recognition of “TRNC”!

Meanwhile, the occupation authorities do not allow trade from the free areas to the North, , while they refuse the EU financial

protocol for political reasons. Nor has there been any acknowledgement of the 100's of millions of dollars going to the occupied areas especially after the limited opening of the green line.

What can the EU do about the Cyprus problem?

The EU's political record in addressing problems among its members is not encouraging. Look at Gibraltar, Corsica, Ireland, the Basques, the Greek-Turkish problems (Imia) among others. The EU is under US and Turkish pressure. They both play the Islamic card to gain concessions and "sensitivity" for Turkey, instead of supporting the EU to uphold its standards.

This is why Cyprus needs not only to explain and promote better its own case, but to build the kinds of coalitions that will help promote its interests as Turkey enters the path of EU accession. Cyprus should not attempt to play alone the "Greek card" (what Greece did prior to 1995 in the EEC/EU) against Turkey. Cyprus should not absolve the others of their responsibility vis a vis Turkey.

Turkey claims that signing the customs union agreement does not mean recognizing Cyprus. Turkey denies access to Cypriot vessels in TR ports, and does not allow Cypriot aircraft to use its aircorridors. Turkey and its allies have also indicated that a future settlement of the Cyprus problem will resolve all these issues. However, this is NOT a matter of "give and take". It is an obligation that Turkey has vis a vis the EU and toward all EU members.

Whether Turkey formally recognizes Cyprus or not, its signature of the customs union agreement is significant. It is the Republic of Cyprus of 1960 that is a member of the EU, even though the

acquis cannot be implemented in all of the Republic's territory due to the Turkish occupation.

What is the best we can expect of the EU in the case of the Cyprus problem? To make sure that future negotiations are based on European law, the acquis, the Court decisions and the emerging European constitution. The EU must NOT allow it self to be put in the position of having to accommodate the settlement as it happened in 2004. The difference now is that the Republic of Cyprus is an EU member. This is why the US, the UK, and the UN insisted that Annan-5 with all its derogations be approved before May 1 and the Cypriot accession to the EU.

What Cyprus needs to do?

In addition to the coalition building that we talked about, Cyprus needs to engage in long term planning; needs to decide what it expects of the EU and the UN; in view of the plans presented by international mediators, it needs to decide what is a viable and functional solution and, finally, avoid partisan bickering! Diversity is the essence of democracy, but there is no place for petty partisan politics when the survival of Cyprus is at stake.

What does the US need to do?

If the US truly believes in a viable settlement that conforms to the rule of law and to the new reality of the EU, it must avoid provocations, threats, and attempts to upgrade the occupied areas and its leadership. This is particularly critical now because the credibility of the US and the UN, in the aftermath of Annan-5, is virtually zero.

Let me close by talking briefly about threats in the horizon.

If the US and the UK plan to continue upgrading the occupied areas, Cyprus must keep an eye on three dangerous possibilities:

- a) The “TRNC” as an autonomous entity of the EU”:
 This is the so-called “Emerson Model” of the Brussels based Center for European Policy Studies. A similar plan is proposed by Dov Lynch of the US Institute for Peace. Under this model, The “TRNC” has its own legitimate procedures, leaders and political autonomy that allows adoption and implementation of laws and regulations. It is able to enjoy trade and political relations with others. Thus the “TRNC” can be treated as an autonomous territory of the EU.
- b) The Taiwan Model:
 While Taiwan the result of an inconclusive civil war, the “TRNC” is the result of secession, invasion and occupation. Yet, Taiwan has shadowy existence, especially since 1971. It is also a member of WTO and is treated as a special customs territory.
- c) The “Kosovo Free Trade Area”. This, in combination with item “a”, may be the most dangerous of the three threats. Kosovo is nominally under the sovereignty of Serbia but under UN administration. The UN interim authority and Albania signed a “free trade area” agreement on behalf of Kosovo.

All these models need to be studied carefully for their political implications. Ret. Cypriot Ambassador N. Makris is one of the few persons that have studied in depth these issues.

Will there be a Cyprus solution any time soon? This is the real \$64 thousand dollar question. If all parties take advantage of the opportunities offered by the EU, then a just and viable settlement that will reunify the Republic of Cyprus is possible.

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