

Cyprus as the EU Anomaly

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Following the failure of the 2004 UN-led referendum, the entry of a divided Cyprus into the European Union has introduced an unprecedented anomaly within the Union's system. This paper argues that this anomaly entails a complex pattern of contradictions between EU law and the European Union's political perspective on Cyprus that has weakened both EU law and the European Union's conflict-resolution capacity in regard to inter-ethnic relations in Cyprus, Cyprus–Turkish relations and EU–Turkish relations. The enquiry concludes with an exploration of EU strategies for addressing the Cyprus anomaly in a manner that realigns EU law and the European Union's peace-building capacity for the Eastern Mediterranean.

Introduction

It is generally acknowledged that, among other things, EU enlargement and the inter-state and inter-societal integration it forges is a fundamental process of conflict resolution and peace building that is particularly relevant for the era of globalisation.¹ Through successive waves of enlargement the European process has manifested an extraordinary record of success in conciliation and stabilisation. The most recent case has been the non-belligerent, EU-induced transformation and integration of Eastern European countries to a degree that it melted down the Iron Curtain without a trace.²

In regard to the Eastern Mediterranean, however, the peace-building capacity of EU enlargement has not met with complete success, especially following the failure of the 2004 Cyprus referendum.³ While inside the EU framework since 2004, the Cyprus conflict had sustained its intractability and escalated

1. Thomas Diez, Stephan Stetter and Matthias Albert, "The European Union and Border Conflicts: The Transformative Power of Integration", *International Organization*, Vol. 60, No. 3 (2006), pp. 563–593; Jeremy Rifkin, *The European Dream: How Europe's Vision of the Future is Quietly Eclipsing the American Dream* (Cambridge: Polity Press, 2004); Mark Leonard, *Why Europe Will Run the 21st Century* (New York: Public Affairs, 2005); David Wood and Birol Yesilada, *The Emerging European Union* (New York: Longman, 2006).

2. Harry Anastasiou, "The EU as a Peace Building System: Deconstructing Nationalism in an Era of Globalization", *International Journal of Peace Studies*, Vol. 12, No. 2 (2008), pp. 31–50; *Communication from the Commission, 2005 Enlargement Strategy Paper* (9 November 2005), available: <http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=505DC0561/> (accessed 3 December 2005).

3. Natalie Tocci, *The EU and Conflict Resolution: Promoting Peace in the Backyard* (New York: Routledge, 2007).

complications within the European Union in regard to Greek Cypriot (GC)–Turkish Cypriot (TC) relations, Cyprus–Turkish relations and Turkish–EU relations.

The European Union's Anomalous Encounter with Cyprus

EU Process 2004–2008: From Peace-enhancing Catalyst to Paralysis

Prior to 2004, the EU process was genuinely catalytic in resolving the Cyprus problem and for normalising Greek–Turkish–Cyprus relations. The rising rapprochement between Greece and Turkey at both inter-state and inter-societal levels since 1999, the EU accession process of Cyprus, the decade-long, marginal but exemplary inter-ethnic citizen peace-building initiatives in Cyprus, and Turkey's EU candidacy and Europeanising orientation gradually gave rise to an unprecedented historical dynamic. This suggested a likely convergence of the interests of TCs, GCs, Turkey, Greece and the European Union, and the association of these interests with peace in Cyprus and the region.⁴

In this context, the European Union's vision and strategy was to support and reinforce the UN-initiated effort so as to achieve a Cyprus settlement prior to 1 May 2004, when Cyprus was set to join with nine other countries in the largest wave of EU enlargement. Sadly, at the very moment the EU process, together with UN efforts, induced the Turkish side to abandon its traditional secessionist nationalism and opt for a reunified Cyprus, the GC side, which traditionally pursued reunification, was led by GC President Papadopoulos to reject the UN-brokered peace plan. With 64.9% of the TC vote in favour of the so-called Annan Plan and 75.8% of the GC vote against it, the 24 April referendum failed as the last effort to reunify Cyprus prior to joining the Union.

In the years that followed, the European Union became increasingly confronted with a series of confusing and contradictory phenomena arising from the entry of a divided Cyprus into the Union. The European Union's Eastern Mediterranean policy, which intended to facilitate convergence and reconciliation in Cyprus and in Greek–Turkish relations, fell into disarray, leading to a period of considerable paralysis in the years 2004–2008.⁵

4. Harry Anastasiou, "Negotiating the Solution to the Cyprus Problem: From Impasse to Post-Helsinki Hope", *Cyprus Review*, Vol. 12, No. 1 (2000), pp. 11–33; Harry Anastasiou, *The Broken Olive Branch: Nationalism, Ethnic Conflict and the Quest for Peace in Cyprus*. Vol. II: *Nationalism versus Europeanization* (Syracuse, NY: Syracuse University Press, 2008); G. Christou, *The EU and Enlargement: The Case of Cyprus* (Basingstoke: Palgrave Macmillan, 2004); B. Coppieters, M. Emerson, M. Huysseune, T. Kovziridze, G. Noutcheva, N. Tocci and M. Vahi, *Europeanization and Conflict Resolution: Case Studies from the European Periphery* (Gent: Academia Press, 2004); Ayten Gundogdu, "Identities in Question: Greek–Turkish Relations in a Period of Transformation", *MERIA Journal* (June 2001), available: <<http://meria.idc.ac.il/journal/2001/issue1/jv5n1a8.html/>>; Aslan Gündüz, "Greek–Turkish Disputes: How to Resolve Them", in Dimitris Keridis and Dimitios Triantaphyllou (eds.), *Greek–Turkish Relations in the Era of Globalization* (Dulles, VA: Brassey's, 2001), pp. 81–101; Gareth Jenkins, "Turkey's Changing Domestic Politics", in Keridis and Triantaphyllou (eds.), *Greek–Turkish Relations in the Era of Globalization*, *op. cit.*, pp. 19–40; Dimitris Keridis, "Greek–Turkish Relations in the Era of European Integration and Globalization", in Keridis and Triantaphyllou (eds.), *Greek–Turkish Relations in the Era of Globalization*, *op. cit.*, pp. xvi–xxii.

5. Harry Anastasiou, *The Broken Olive Branch: Nationalism, Ethnic Conflict and the Quest for Peace in Cyprus*. Vol. I: *The Impasse of Ethnonationalism* (Syracuse, NY: Syracuse University Press, 2008); Carl Bildt, "Open Wide Europe's Doors", *International Herald Tribune* (7 November 2006), available: <<http://www.iht.com/articles/2006/11/07/opinion/edbildt.php>> (accessed 22 December 2006).

From the very outset, the accession of a divided Cyprus confronted the European Union with a set of immediate contradictions and ambiguities that were generally self-evident. Cyprus became the first EU member country that was ethnically divided; that was represented at EU level exclusively by members of one of the rival ethnic communities; that was partially occupied by the military forces of an EU candidate state; that had the institutional means to implement the *acquis communautaire* in one part of its territory but not in another; that had a ceasefire line and a buffer zone manned by UN peacekeepers; and that had one portion of its citizenry deprived of the right to their property and residence and another portion of its citizens deprived of the right of access to and participation in the EU economy and EU political institutions. Moreover, Cyprus was the only EU member where its major ethnic communities recognise EU law while simultaneously rejecting each other's law; where its major ethnic communities accept the legitimacy of the European Union while rejecting each other's legitimacy within their own shared island. In all these ways, the phenomenon of Cyprus constituted an historically unprecedented EU anomaly that stood in sharp contrast to the essential norms and foundation of the European Union. What, then, is the meaning of harmonisation? Indeed, the case of Cyprus warrants a renewed consideration of the degree to which Cyprus deviates from, and needs to adapt to, the essential EU requirements of harmonisation.

More importantly, however, the accession of a divided Cyprus infused into the European Union's edifice not only these rather self-evident anomalies but also more subtle and deep-seated ones that effectively brought the European Union in contradiction with itself. The specific factors that led to this sad situation may be identified in terms of two perspectives in the first of which lie anomalies and contradictions that emanated from the particular conflict structure in which the relationship between GCs and TCs had been traditionally locked and, secondly, in EU anomalies and contradictions that emanated from the impact of the conflict structure of the Cyprus problem on the EU's relations to GCs, TCs, Turkey and the Eastern Mediterranean region in general.

Anomalies Arising from GC–TC Relations within the European Union

To understand the ambiguities with which the European Union is confronted, which emanated from the inter-communal conflict structure of the Cyprus problem, requires an initial reference to how historically each of the ethnic communities conceptualised it.

Traditionally, GCs and Greece tended to view the Cyprus problem as a case that essentially concerns the violation of the legality and territorial integrity of the Republic of Cyprus, that is, as a matter of the military invasion and partial occupation of an independent, UN-recognised state by another state. The Greek side thereby historically confronted the Turkish military presence in northern Cyprus, and the de facto partition it led to in 1974, as an international problem entailing the flagrant violation of international law.⁶

6. Kypros Chrysostomides, *The Republic of Cyprus: A Study in International Law, Developments in International Law*; Vol. 35 (The Hague: Nijhoff, 2000); C. Ioannides, "Changing the Demography of Cyprus: Anatolian Settlers in the Turkish-occupied North", in *Cyprus Yearbook 1992* (Nicosia, Cyprus: KY.K.E.M, 1993).

In their primarily legalistic perception, and contrary to the perception of the Turkish side, the GCs have tended to suppress and neglect the fact that the tragedy they experienced as a result of the Turkish invasion of 1974 was also the culminating point of a decade and a half of inter-ethnic bloodshed, of inter-Greek violence, of subversive Cold War politics and of the Athens-led *coup d'état* against the Republic of Cyprus. Even though the GCs have always been tacitly aware of these realities, they systematically evaded them in their dealings with the Turkish side, resorting to the artificial convenience of a purely legalistic interpretation of the Cyprus problem.⁷

Consequently, the Greek side conceptualised the sought-after solution in terms of the restoration of the legitimacy and territorial integrity of the Republic of Cyprus as the basis of restoring the rule of law and human rights island-wide. To this end the GCs, since 1977, entertained, with difficulty, the possibility of a bi-communal, bi-zonal federation on condition that its structure entailed a strong central government. In any event, for the GCs any form of federation was always perceived as a painful compromise. With the Papadopoulos administration of 2003–2008, the legitimacy perspective was radicalised. In its public verbal expressions the GC leadership articulated a maximalist federalist perspective. In essence, however, it reverted to a tacit rejection of bi-zonality in favour of a more “purist” legalistic approach that strove to reaffirm and de facto reinstate the Republic of Cyprus as close as possible to its original unitary form and its original status of the sole legitimate state of all Cyprus.⁸

On the other hand, TCs and Turkey traditionally perceived the Cyprus problem not as primarily legal in nature but essentially as one of asymmetrical inter-ethnic power relations that, in their view, prompted and sustained a half-century-old attempt by the GCs to marginalise and even annihilate the TC community.⁹ The Turkish side saw the problem as one of domination, oppression and violation of the TCs by the more powerful and affluent Greek-backed GC majority. TCs viewed the inter-ethnic bloodshed of 1963–1974, as well as the Athens-led *coup d'état* that preceded Turkey's intervention, as the culmination of the Greek side's attempt forcefully to Hellenise the island, contrary to the Cyprus constitution of 1960, to the detriment of the TC community. In Turkish eyes, all of the above essentially amounted to the historical annulment of the Republic of Cyprus and hence of its island-wide sovereignty and legitimacy.¹⁰

Thus, the Turkish side's inclination was to view the Cyprus problem as primarily and essentially a political problem rather than a legal one. This interpretation led the Turkish side to ignore and evade the fact that the security system the Turkish army furnished for TCs simultaneously resulted in a perpetual massive violation of GC human rights. With the exception of the recent administrations of the Justice and Development Party, Turkey and the TCs have tended for decades to downplay the fundamental legal violations which underpinned the breakaway “Turkish Republic of Northern Cyprus” (TRNC) in favour of an artificially simplified preference for a merely political interpretation of the Cyprus

7. Anastasiou, “Negotiating the Solution to the Cyprus Problem”, *op. cit.*

8. Harry Anastasiou, “Nationalism as a Deterrent to Peace and Inter-ethnic Democracy: The Failure of Nationalist Leadership from the Hague Talks to the Cyprus Referendum”, *International Studies Perspectives*, Vol. 8, No. 2 (2007), pp. 190–205; *idem*, *The Broken Olive Branch*, Vol. II, *op. cit.*

9. Rauf R. Denktash, *The Cyprus Triangle* (London: Allen & Unwin, 1982).

10. *Ibid.*

problem. In the TC mind, the Cyprus problem was traditionally perceived in terms of a fundamental encroachment of the TCs' right to self-determination by the GCs. For Turkey and the TCs, therefore, the sought-after solution entailed a new political configuration of TC–GC power relations that would secure for the TCs a new state-based independence from the GCs.¹¹ It was in this perspective that for decades TCs strove for secession, and more recently entertained the prospect of a loose bi-communal, bi-zonal federation when the post-Denktaş leadership reframed TC nationalism in terms of ethnic equality within a reunified Cyprus.¹²

These were the polarised perspectives that have rendered the Cyprus conflict protracted and exceedingly frustrating to all third-party attempts at a resolution. When considered from a diachronic vantage point, the TCs' political arguments have always tended to be stronger than their legal arguments, whereas the GCs' legal arguments have always tended to be stronger than their political arguments.

Upon closer scrutiny, a more accurate and objective approach compels the acknowledgement that integral to the Cyprus problem is a complex admixture and intertwining of legal and political issues. To be sure, part of the Cyprus problem falls within the category of legitimacy and legal issues (i.e. military occupation, refugees, human rights violations, the fate of missing persons, property rights). However, other aspects of the Cyprus problem fall within the category of political issues (such as the nature of the settlement, including new power-sharing arrangements, territorial adjustments, security issues, the need for a new constitution and the like).

In light of the above, the 2004 accession of a divided Cyprus imported into the EU the perennial tension between the legal and the political aspects of the Cyprus problem precisely as it was reflected in the rival approaches of the GCs and TCs. By accepting a divided Cyprus, the EU also incorporated into its edifice the problematic conflict structure of the Cyprus problem, despite its good intentions.

The European Union's Dilemma

As a result of importing the Cyprus problem, the European Union was inadvertently set on a path that systematically led to deepening paradoxical choices in dealing with Cyprus and Cyprus's regional impact, particularly in regard to EU–Turkish relations. From 2004 onwards, the European Union was increasingly confronted with dilemmas rather than authentic and salient choices.

The EU Post-2004 Perspective on the Status of the Republic of Cyprus

In strictly following what the law prescribed, the European Union was compelled *ipso facto* to recognise the Republic of Cyprus as the sole legal state entity of the Mediterranean island. Recognising the sovereignty and territorial integrity of the Republic of Cyprus was an indisputable issue of state legality on the

11. Niazzi Kizilyurek, *Hi Kypros Peran tou Ethnious* (Nicosia: G. Kasoulides, 1993); *idem*, "The Politics of Separation and the Denial of Interdependence", *The Cyprus Review*, Vol. 10, No. 2 (1998), pp. 33–39; Ozker Ozgur, "This is the Situation", *Friends of Cyprus Report*, Vol. 43 (2000).

12. Neophytos Loizides, "Ethnic Nationalism and Adaptation in Cyprus", *International Studies Perspectives*, Vol. 8, No. 2 (2007), pp. 172–189.

grounds of both EU law and international law. This stance was fully aligned with the rule of law, which constitutes a cornerstone of the European Union's regime. Moreover, not to have acted on the recognised legality of the Republic of Cyprus would have implied that the European Union was granting direct or indirect recognition and legitimacy to the breakaway state of the TRNC. More strikingly, the European Union would have appeared to be legitimising the forced presence of Turkish troops on the soil of an EU Member State. Indeed, from the vantage point of the European Union's regime of the rule of law, such eventualities could not be tolerated.

However, in following the prescription of the law the European Union simultaneously collided with its stance on the central political dimension of the Cyprus problem. By backing the legality of the Republic of Cyprus, the European Union was in effect reinforcing the very state structure that in its judgement needed to be superseded in any effort to arrive at a comprehensive settlement of the Cyprus problem. While a number of EU states started with misgivings about unconditionally admitting Cyprus into the Union, by 1 May 2004 they unanimously agreed to do so. But in admitting Cyprus as a divided country under the exclusive legal rubric of the GC-controlled Republic of Cyprus, the EU unwittingly entrenched the Cyprus problem. This was particularly evident in the fact that all the seats, all the votes and all the posts allocated to Cyprus in the EU Parliament, Council and Commission respectively were given to GCs. Particularly for GC nationalists, who thrived under the 2003–2008 Papadopoulos administration, this was not only a great disincentive for seeking a negotiated settlement but also a greatly empowering means for pursuing their unilateral legalistic approach to the Cyprus problem.¹³ Under the circumstances, the official GC approach¹⁴ came across as legalistically patronising rather than politically proactive in search of a negotiated settlement. These outcomes also elated Turkish and TC nationalists who had been trying to revive the secessionist agenda, while it angered and alienated the Turkish pro-peace forces in both Cyprus and Turkey. Not surprisingly, by 2007, opinion among EU leaders was that it was a mistake to have admitted a divided Cyprus unconditionally into the Union.¹⁵

According to the UN resolutions on Cyprus, the final settlement is to be negotiated on the basis of a bi-zonal, bi-communal federation, which will consequently transcend and annul the unitary state structure of the Republic of Cyprus. Interestingly, the negotiated resolution of the Cyprus problem on the UN model was always the European Union's policy on Cyprus. But since the accession of a divided Cyprus, this policy, which reflected the EU's political perspective on the Cyprus problem, came to clash with the EU's rule of law regarding Cyprus.

The EU Post-2004 Perspective on the Status of Turkish Troops in Cyprus

Since the accession of a divided Cyprus, another dilemma facing the European Union concerned the status of the Turkish troops in Cyprus. How was the

13. Anastasiou, *The Broken Olive Branch*, Vol. II, *op. cit.*

14. Euripides L. Evriviades, "Cyprus in the European Union: Prospects for Reunification, Peace with Turkey and Regional Stability", *Mediterranean Quarterly*, Vol. 16, No. 3 (2005), pp. 1–16.

15. International Crisis Group, "Turkey and Europe: The Way Ahead" (17 August 2007), available: <<http://www.crisisgroup.org/home/index.cfm?id=5021&1/>> (accessed 14 September 2007).

European Union to view and act in relation to the presence of Turkish troops in Cyprus? Clearly, prior to Cyprus's accession the EU process posed a formidable challenge to Turkey to abandon its secessionist approach to the Cyprus problem, to induce the TCs to engage in fully fledged negotiations with the GCs for the reunification of Cyprus and to come to terms with the fact that withdrawing its troops from Cyprus was integral to both the Cyprus solution and Turkey's European aspirations. It is common knowledge that the European Union's strategy had a huge impact on Turkey and the TCs during the run-up to the 2004 referendum.¹⁶ So much so that the Turkish side, putting aside its decades-long intransigence and secessionist agenda, opted for a reunified Cyprus in support of the UN peace plan, otherwise known as the Annan Plan.

However, with Papadopoulos—the President of an EU Member State—urging the GC side to vote overwhelmingly against the Annan Plan, the European Union modified its stance on the Turkish army, assuming a softer approach. Understandably, the European Union struggled to maintain the balance between the legal and the political considerations regarding Cyprus and Turkey. Acknowledging that Turkey had marginalised Denktash's intransigence and supported TC moderates who abandoned secession in favour of a federal settlement, the European Union entered a phase of reducing and even evading references to the "Turkish occupation" of Cyprus. This was clearly reflected in the European Commission's report to the European Council and Parliament that was published soon after the Cyprus referendum.¹⁷ To the dismay of the GCs, official and explicit EU references to the military occupation of Cyprus as an illegal phenomenon all but disappeared.¹⁸ Indicative of this is the fact that since 2004 the European Union has simply referred to northern Cyprus as the part of the island that is not under the control of the Republic of Cyprus.

This shift in the European Union's approach was understandably based on *political considerations*. It reflected the fact that from the perspective of the European Union, and that of the international community, Turkey's 30-year-old burden of being the intransigent side, the side that lacked political will, had been considerably lifted since Turkey changed its Cyprus policy in favour of reunification.¹⁹ In this, the European Union took cognisance of the fact that the Annan Plan, which Turkey and the TCs supported, provided for the progressive withdrawal of all foreign troops. Downplaying the Turkish occupation of Cyprus was thus consistent with the European Union's political position in that while the European Union was compelled to respect the GCs' decision to vote against the

16. Anastasiou, *The Broken Olive Branch*, Vol. II, *op. cit.*; Bahar Rumelili, "The European Union's Impact on the Greek–Turkish Conflict: A Review of the Literature", *Working Papers Series in EU Border Conflict Studies*, No. 6 (2004).

17. *Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's Progress Toward Accession* (6 October 2004), available: <http://europa.eu.int/comm/enlargement/report_2004/pdf/tr_recommandation_en.pdf> (accessed 20 October 2004).

18. *EU Business* (19 October 2004), available: <<http://www.eubusiness.com/>> (accessed 2 November 2004).

19. *Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's Progress Toward Accession*, *op. cit.*; *The Economist*, "A Chance for Peace and Unity Wasted", (25 April 2004), available: <<http://www.economist.com/index.html/>> (accessed 18 May 2004).

UN peace plan in 2004, it held the GC leadership responsible for the failure to resolve the Cyprus problem—a position identical to that of the United Nations.²⁰

Simultaneously, however, the military occupation of part of Cyprus, an EU Member State, by Turkey, an EU acceding state, was absolutely contrary to EU law and a clear contravention of all the fundamental principles that the European Union was built on and stands for regarding inter-state peace, democracy and the rule of law. Thus, the European Union's lenient approach on the issue of Turkey's military occupation of Cyprus, which was derived from the European Union's political position on Cyprus, tended to weaken the European Union's legal regime in the Eastern Mediterranean—thus in turn aggravating the GC government of the Republic of Cyprus.

The inexorable dilemma of the European Union following the failed 2004 referendum was that if it followed the law it could not effectively address the political aspects of the Cyprus problem. If it tried effectively to address the political aspects of the Cyprus problem, which implied the surpassing of the Republic of Cyprus, it clashed with the law.

The Roots of the European Union's Cyprus Dilemmas

This situation did not result from what the European Union originally intended. Rather, it was the outcome of the ethnocentric nationalist strategy that motivated the particular TC and GC leaders who were consecutively in office during the run-up to the referendum, namely Rauf Denktash and Tassos Papadopoulos. Their similarly mono-ethnic concept of statehood was precisely what led to their strategy of polarisation in that their ethnocentric nationalism, in principle, rejected any notion of inter-ethnic democracy, viewing it as a bastardised form of nationhood.²¹ Conditioned by this perspective, the process that led to the Cyprus–EU impasse had two phases. The first was the 2002/03 strategy of the former TC leader Denktash to delay and obstruct any settlement, hoping that if only the GC part of Cyprus joined the European Union it would pave the way towards the permanent partition of Cyprus—a strategy that failed.²² The second was the 2004 strategy of GC President Papadopoulos to delay and obstruct any settlement, hoping that if Cyprus joined the European Union and was still divided, the GC government would be in a position to assert the legitimacy of the Republic of Cyprus and impose it on the Turkish side vis-à-vis EU law and unilaterally demand concessions from Turkey, again through the route of EU law and regulations—a strategy which also failed.²³

20. United Nations, *Report of the Secretary-General on his Mission of Good Offices in Cyprus* (Report No. S/2004/437), (28 May 2004), available: <<http://www.un.int/cyprus/s4372004.htm/>> (accessed 27 June 2004); *Turkish Daily News*, "Germany Puts Full Weight behind Turkey" (19 October 2004), available: <<http://www.turkishdailynews.com.tr/>>; *Turkish Daily News*, "Lamy Says Turkey has European Vocation, but Calls for Debate" (19 October 2004), available: <<http://www.turkishdailynews.com.tr/>>; *Turkish Daily News*, "Zapatero: Europe's Door Open to Turkey" (19 October 2004), available: <<http://www.turkishdailynews.com.tr/>>; *Turkish Daily News*, "Solana: Turkey Must be in EU for Europe's Security" (19 October 2004), available: <<http://www.turkishdailynews.com.tr/>> (All accessed 2 November 2004).

21. Anastasiou, "Nationalism as a Deterrent to Peace and Inter-ethnic Democracy", *op. cit.*; *idem*, *The Broken Olive Branch*, Vol. I, *op. cit.*; *idem*, *The Broken Olive Branch*, Vol. II, *op. cit.*

22. Anastasiou, "Nationalism as a Deterrent to Peace and Inter-ethnic Democracy", *op. cit.*; *idem*, *The Broken Olive Branch*, Vol. II, *op. cit.*

23. Anastasiou, "Nationalism as a Deterrent to Peace and Inter-ethnic Democracy", *op. cit.*; *idem*, *The Broken Olive Branch*, Vol. I, *op. cit.*; *idem*, *The Broken Olive Branch*, Vol. II, *op. cit.*

The GC side pursued a similar recourse to EU law to keep TCs from participating in any EU institutions and any activities that were derived from the European Union's inter-governmental decision-making processes. The primarily legalistic approach of the GCs obstructed the TCs from formally participating in sports, university organisations, shipping, and the like both within the European Union and beyond. The extraordinary fact in all this was that from a strictly legal perspective, in abstraction from everything else, Papadopoulos's position was correct in that all of his demands were aligned with the requirements of the law. But in the context of Papadopoulos's refusal to negotiate a final Cyprus settlement on the basis of a bi-zonal, bi-communal federation, his approach and strategy was contrary to the EU perspective on Cyprus, politically counterproductive and thus erroneous.²⁴

Turkey and the TCs, frustrated with the GCs' adversarial use of EU law, incessantly put forward the political, meta-legal aspects of the Cyprus problem, particularly as these became framed after 2004. The Turkish side started with the assertion that in the 2004 referendum, while the TCs voted in favour of UN-based Annan Plan for a final Cyprus settlement and the GCs voted against it, the TCs were being victimised by the Papadopoulos administration through the usurpation of EU law. The Turkish side argued strongly that the European Union had broken its promises to the TCs by capitulating to the caprices of Papadopoulos, who as head of a Member State was blocking both the TC and Turkey's European path in an attempt to impose the Republic of Cyprus on the TCs. They felt strongly that not only did the TCs not benefit from their historic shift away from secession in favour of reunification but that the European Union had allowed Papadopoulos to hold the TCs and Turkey hostage through the belligerent usurpation of the legal instruments of the European Union. In the eyes of the Turkish side, EU law was used to punish the side that proved forthcoming in the 2004 effort to resolve the Cyprus problem—the greatest effort at reconciliation ever undertaken since the independence of Cyprus. From this perspective, the perception of the Turkish side was that the European Union had not been a fair broker in dealing with the two Cypriot communities.²⁵

In effect, Papadopoulos's rejectionist strategy closed down the European Union's options as never before. Given the fact that, in alignment with the United Nations, the European Union viewed the withdrawal of Turkish troops as a derivative of a negotiated settlement, and given the fact that the Turkish side supported the 2004 peace plan, the European Union could not in good faith underscore any longer the illegality of the Turkish troops in Cyprus, as the primary problem was now the unwillingness of GC President Papadopoulos to negotiate in good faith. In this way, Papadopoulos put the European Union in a position of having to raise its tolerance of illegality in northern Cyprus as a prerequisite of sustaining its perspective of political fairness and discretion in the interest of a negotiated final settlement. Throughout the tenure of the Papadopoulos administration, the European Union was never able to transcend this dilemma.

The situation paralysed the European Union into a deadlock between its Cyprus policy on the one hand and its legal regime on the other. This paralysis drove the European Union into a standstill position that by default entrenched the two

24. *Idem*, *The Broken Olive Branch*, Vol. II, *op. cit.*; Bildt, *op. cit.*

25. Jean Christou, "Talat Takes a Swipe at EU", *Cyprus Mail* (16 November 2006), available: <<http://www.cyprus-mail.com/news/>> (accessed 23 November 2006).

major obstacles to a Cyprus settlement—the unqualified and open-ended recognition of the GC-controlled Republic of Cyprus and the increasing tolerance of the presence of Turkish troops on the soil of an EU member country. The longer this situation dragged on following the failed referendum, the more both the solution-impeding constitutional structure of the Republic of Cyprus and the illegal presence of Turkish troops in Cyprus became entrenched as an anomaly within the European Union.

Overall, the European Union ended up incorporating the structure of the Cyprus problem in that it tended to identify with the GC side in regard to the legal aspects of the Cyprus problem and it tended to identify with the TC side in regard to the political aspects of the Cyprus problem. This fact revealed the polarisation between EU law and the European Union's political perspective on Cyprus as coinciding exactly with the protracted structure of the Cyprus problem.

Certainly, the European Union may not be fully responsible for the Cyprus dilemmas it has faced since 2004. However, it was put in a position that hopefully will compel it to search and develop sounder policies and strategies for dealing with ethnocentric, nationalist leaders of acceding countries.

Developments within Cyprus in the Post-2004 Era vis-à-vis the Europeanisation Process

The paralysis that resulted from the accession of a divided Cyprus led the European Union to the tacit position that it would simply let time take its course, hoping for a change in the GC government. However, the total lack of any serious initiative towards a negotiated comprehensive settlement for Cyprus from 2004 to 2008 created new complications on the island, reflecting not only the infusion of the conflict stature of Cyprus into the European Union but also the infusion back into Cyprus of the European Union's dilemmas and ambiguities it inherited from Cyprus in the first place.

Property and Human Rights Issues

In December 2005 the European Court of Human Rights (ECHR), with which the European Union is in unison, ruled in favour of the rights of GC refugees claiming their properties in occupied northern Cyprus. The case of *Xenides-Arestis v. Turkey* was the occasion that led the ECHR to order Turkey to set up an “effective reparation mechanism” not only for the plaintiff but also for another 1,400 similar cases submitted by GCs.²⁶ Despite the fact that the ruling of the court marked a long-awaited vindication for GC refugees, circles among the Papadopoulos government, along with hardline nationalist voices among the populace, expressed their opposition to the ruling owing to the fact that it called on plaintiffs to settle their property claims by applying to the designated Property Commission in northern Cyprus. The assumption was that such an appeal implied recognition of the TRNC and the rehabilitation of Turkey vis-à-vis European law. While the GC government announced that legally it could not obstruct GC refugees from claiming their property rights, it indirectly and informally communicated its

26. *Xenides-Arestis v. Turkey*, European Court of Human Rights, App. No. 46347/99, Strasbourg, 22 December 2005.

objection to them doing so. Nationalists in the GC parliament even suggested that GCs who appeal to the Property Commission be stripped of their refugee status and have their government assistance terminated, while nationalists among the citizenry insinuated that the government should prosecute them.²⁷ The result was that since the ECHR ruling only a handful of GC refugees appealed for the restitution of their property.

Here again, the essence of the approach of the nationalists among GCs was to retain the law as their exclusive instrument of combat against the Turkish side. At face value one would think that the GC nationalists were obstructing the implementation of the law. The essence of their strategy, however, was to keep the Turkish side outside of the framework of the law, as the perpetual violator of the law. Short of full concessions to the GC side, GC nationalists preferred to continue to monopolise the law against Turkey and the TCs rather than allow the normalisation of inter-ethnic relations through the law in regard to the property issue, which would have effectively moved the Turkish side, at least in part, within the framework of the law. The concern of GCs was that if the Turkish side was to align itself fully with the ruling of the ECHR, the GC side would lose the advantage of legitimacy as a vital instrument of pressure against the Turkish side in any eventual settlement.

Interestingly, the Turkish and TC side, in reaction to the GC approach, moved in the opposite direction. To the degree to which the GCs did not wish to address the political aspects of the Cyprus problem, to that extent the Turkish side, provided it was not in technical violation of the law, dragged its feet and slowed down the process of implementing the ruling of the court, thus tacitly welcoming the reluctance of GCs to appeal to the Property Commission in northern Cyprus. The concern of the Turkish side was that as long as a negotiated comprehensive settlement was not in view, the full implementation of the court's ruling regarding GC property would deprive the TCs of a vital *political* card for trade-offs during negotiations with GCs.

Short of a comprehensive negotiated settlement, the anomalous tension during the period 2004–2008 between the legal and the political aspects of the Cyprus problem not only remained unresolved but also weakened both the rule of European law and the European Union's conflict-resolution policy on Cyprus. The phenomenon also suggested that as domestic nationalist politics impeded the implementation of the decision of the ECHR, it sustained the Cyprus conflict and perpetuated the polarisation between the GCs and TCs and between the Republic of Cyprus and Turkey.

The Green Line Regulation

The issues centring on the Green Line Regulation revealed similar trends. Adopted by the EU Council in April 2004 and amended in February 2005, the Green Line Regulation defined the terms under which "the provisions of EU law will apply to the line between the areas in which the Government of the Republic of Cyprus exercises effective control and the areas in which it does not". The purpose of the regulation was to build bridges between the two Cypriot communities through trade, ease the economic isolation of the TCs and

27. Jean Christou, "Sigma Hands Property Commission List to AG", *Cyprus Mail* (7 June 2007), available: <<http://www.cyprus-mail.com/news/>> (accessed 2 July 2007).

contribute to the economic integration of the island. The European Union viewed the measures as “essential for the reconciliation on Cyprus and helpful for creating a positive political climate which would open the way for a comprehensive settlement on the island”.²⁸

In practice, however, inter-ethnic trade across the green line proved quite ineffective in meeting these objectives. The European Commission’s original recommendation on trade was both to open trade across the green line and also to allow TCs a measure of direct access to the EU market. Appealing to EU law and regulations on inter-state trade, the Papadopoulos government successfully blocked direct trade between the TCs and the European Union, while accepting trade between the two Cypriot communities as provided by the Green Line Regulation. The critical issue here was the logic motivating the GC position. Under the presidency of Papadopoulos, the strategy of the GC government was that if negotiations for a comprehensive settlement were to be persistently evaded and deferred to an unspecified distant future, allowing the TC north to trade *exclusively* with the GC south as the sole legal route to accessing the EU market would in time absorb the TC community into the Republic of Cyprus.²⁹

The erroneous assumption here was that if this process were to be played out, in the course of time the TCs would find themselves integrated into the Republic of Cyprus, Turkey’s occupation would be challenged vis-à-vis EU law and the process of economic integration, and the republic’s sovereignty over all of Cyprus would be restored without the need for substantive negotiations for a new Cyprus, for a bi-communal, bi-zonal, federal Cyprus. Clearly, Papadopoulos’s purely legalistic approach failed to deliver his anticipated results.

Against the backdrop of the GC rejection of the UN peace plan in the 2004 referendum, the TC administration, sensing the GC government’s approach to opening trade across the green line, became increasingly reluctant to engage in fully fledged trade with the GC south. What was evident to the Turkish side was that the Papadopoulos government was moving away from the UN framework and directives (which the GCs had been invoking for three decades) and was now attempting to forfeit a comprehensive negotiated settlement for the gradual economic assimilation of the TC community into the unitary structure of the Republic of Cyprus, now underpinned by EU law.

Inevitably, between 2004 and 2008, the incentive for TCs to raise their economic standard by trading with the GC south was eroded. Trade with the south was seen as a GC trap that attempted to evade negotiations for a comprehensive settlement and thus disregard the political aspects of the Cyprus problem. By the end of 2007, the increasing resistance to TC–GC economic transactions reached new levels of expression, when both the TC and GC media were reporting incidents of TC police harassing and intimidating TCs at the checkpoints when returning from shopping excursions to the GC south.

What became evident from this pattern was that while the TC side remained within the formal framework of the Green Line Regulations, the motivation to trade with the south had all but disappeared.³⁰ As long as the GC side refrained

28. *Europa*, “Green Line Regulation: Trade across the Green Line in Cyprus” (17 February 2005), available: <<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/197&format=HTML&aged=0&language=EN&guiLanguage=en/>> (accessed 25 February 2005).

29. Anastasiou, *The Broken Olive Branch*, Vol. II, *op. cit.*

30. Hugh Pope, “Settling Cyprus”, *Wall Street Journal, Europe* (14 February 2008).

from addressing the political aspects of the Cyprus problem through comprehensive negotiations, the TCs were reluctant to engage the TC side on merely legal terms. On the other hand, the Papadopoulos administration, prioritising the legality of the Republic and Cyprus and EU law, remained indefinitely reluctant to engage the TCs on political terms.

Throughout the post-referendum 2004–2008 era, the European Union's demand for full adherence to EU law in combination with the European Union's passivity regarding the trans-legal political aspects of the Cyprus problem not only missed the mark but exposed EU law to ethnocentric exploitation, which in turn contributed to the retardation and erosion of inter-ethnic relations. Papadopoulos's refusal to engage in negotiations for a final settlement had much to do with the European Union's political inaction in 2004–2008. Simultaneously, however, the European Union's political inaction permitted Papadopoulos to resort to an unqualified usurpation of EU law, while concealing behind EU law his un-European nationalism—a mentality that EU law and institutions were intended to curb, not to enhance!

Anomalies at the Regional Level

The Ankara Protocol

The anomalous accession of Cyprus also produced an array of EU dilemmas at the regional level, pertaining to Cyprus–Turkish–EU relations. One of these entailed the EU requirement for Turkey to extend the Ankara Protocol, establishing unimpeded free trade relations, to all new EU Member States, including the Republic of Cyprus. In the face of Papadopoulos's resistance to re-engage in negotiations for a comprehensive Cyprus settlement and his persistence in blocking any EU attempts to ease the economic isolation of the TCs, Turkey refused to extend the Ankara Protocol fully by keeping its air and sea ports closed to the GC-controlled Republic of Cyprus. As long as the political aspects of the Cyprus problem were not being addressed and as long as a final Cyprus settlement was not in sight, Turkey would not unconditionally recognise the Republic of Cyprus.

Resorting to EU law and regulations, the Papadopoulos administration subsequently pursued a policy of halting Turkey's accession process. As a result, the European Union, compelled to act on its laws and regulations, decided to suspend accession negotiations with Turkey on 8 of the 35 chapters of the harmonisation process that had a bearing on trade with Cyprus. This EU decision, however, ran against the European Union's political perspective on Cyprus and on EU–Turkish relations, as the implementation of EU rules drove a deeper wedge between GCs and TCs, between the GC-run Republic of Cyprus and Turkey, and between Turkey and the European Union.

This stood in stark contrast to the peace-promoting, catalytic role that the European Union played in the period 1999–2004, when EU law and EU policy on Cyprus and the region were in concert. The EU's unqualified acceptance of the Republic of Cyprus and firm stance on the illegitimacy of Turkey's military control of northern Cyprus was indeed a constructive resolution-enhancing approach throughout the years prior to 2004. This was so because, at the time, the Turkish side attempted incessantly to obstruct Cyprus from proceeding towards EU accession, while the intransigent, secessionist nationalism of both

the TC leadership and of Turkey were seen as the greatest obstacle to a Cyprus settlement.

However, in the post-2004 era, this same policy became counterproductive. Thanks primarily to the referendum and post-referendum strategy of Papadopoulos, the European Union found itself entrapped in a tension between its legal processes and its political perspective regarding Cyprus. It was a tension which coincided exactly with the polarisation between Papadopoulos's essentially legalistic approach and the Turkish/TC essentially political approach to the Cyprus problem.

The irony in this outcome, reflecting the deteriorating relationship between EU law and the European Union's political perspective on the Eastern Mediterranean, was that the European Union ended up punishing Turkey over its refusal to open its air and sea ports to the Republic of Cyprus, and not over its occupation of Cyprus, a Member State. In the corridors of diplomacy, it was common knowledge that the EU leaders resorted to their stance on Turkey not in good conscience but in utter frustration with the antinomies and contradiction they faced which resulted from Papadopoulos's refusal to negotiate a comprehensive Cyprus settlement in good faith.³¹ The European Union's approach thus reflected a divided mind rather than a cohesive and integrated policy.

Against the backdrop of all the ambiguities that the European Union faced between 2004 and 2008, a vital factor deterring the deterioration of EU–Turkish–Cyprus relations was the sustained and deepening rapprochement in the bilateral relations of Greece and Turkey. Despite the failure of the 2004 Cyprus referendum, Greece and Turkey quietly made the fundamental strategic decision to continue and even intensify their bilateral economic, political and cultural activities, contributing to building a new relationship of common interests based on peace and cooperation.

Cyprus Oil and Natural Gas Exploration

A further regional matter pertaining to the unresolved Cyprus problem that confronted the European Union with further politico-legal ambiguities concerned the controversial issue over who has the right to explore the oil and natural gas reserves around Cyprus. According to EU law, in alignment with international law, the Republic of Cyprus has full rights to energy exploration within its offshore domain of jurisdiction. This was stated by an EU official. Indeed, no sub-national community of an EU Member State can explore energy reserves, as it has no legal instruments for doing so.

However, if the law were to be fully and unconditionally implemented, it would result in the GCs, who run the Republic of Cyprus, securing monopoly access to all the energy reserves in question. Pursuing a strictly legal interpretation of the situation, the Papadopoulos administration tacitly purported that TCs would be cut out of any deal unless there was a Turkish troop withdrawal from the island and the TCs rejoined the republic and placed themselves exclusively under its legal regime.³²

31. Bildt, *op. cit.*

32. Elias Hazou, "All Sides Need to Tone down the Rhetoric", *Cyprus Mail* (27 January 2007), available: <<http://www.cyprus-mail.com/news/>> (accessed 5 February 2007).

In response, the TCs and Turkey, pursuing a mainly political line of argumentation, fiercely objected to the GC position, asserting that as inhabitants of Cyprus, the TCs too have rights to energy exploration around the island, particularly off the northern shores. In the eyes of the Turkish side, the political argument resonated stronger when reference was made to the fact that it was the GC side that rejected the UN peace plan in 2004 and not the TCs. Hence, to cut the TCs out of any energy deal was viewed by the Turkish side as unfair, discriminatory and provocative.

Inducing reactions and counter-reactions by the GC government on the one hand and the TCs and Turkey on the other, the episode led to a dangerous escalation of bellicose rhetoric, accompanied by the movement of Turkish warships in the vicinity of the areas in question.³³ From an EU perspective, this entire episode presented an unprecedented oxymoron. Rather than moving in the direction of conciliatory cooperation and solidarity, as the process of European integration intends, one saw an EU Member State and an acceding state clash around polarised legal and political approaches to the issue of energy exploration.

Recognising the deadlock between the Turkish political perspective and the GC legal perspective, the European Union, and particularly Greece, through a process of diplomatic intervention and dialogue, helped to defuse the dangerously escalating tension by inducing the rival sides to abandon what was deemed un-European behaviour. The clash between the GC side's legal approach and the Turkish side's political approach ended in a state of mutual paralysis, leaving the huge energy reserves of Cyprus untapped for a later time. Here again, short of a comprehensive Cyprus settlement, the polarised legal and political perspectives emanating from the conflict structure of the Cyprus problem deterred and complicated the normalisation of inter-ethnic relations in the Eastern Mediterranean region in a manner that presented the European Union with an anomaly within its framework of integration and enlargement.

EU Challenges and the Way Forward

Reconceptualising the Parameters of the Cyprus Problem within the EU Perspective

From the outset, the European Union rightly proceeded on the grounds that it did not recognise the Turkish-backed TRNC and that it recognised only the GC-controlled Republic of Cyprus. This approach was fully aligned with EU law. However, the extra-legal, hence political, issue that the European Union must confront decisively is that while the Republic of Cyprus has been the sole recognised state of Cyprus, its constitutional structure does not comprise the final settlement of the Cyprus problem. With the exception of GC President Papadopoulos, this has been the prevailing perspective among EU leaders. However, the European Union has not yet found an effective way to transpose this perspective into consequential policy decisions and political actions, in a manner that would not violate EU law and would take the process of finding a Cyprus solution to the next level.

33. Andrew Borowiec, "Turkey Defiant over Oil Deposits", *The Washington Times* (3 February 2007), available: <<http://www.washtimes.com/>> (accessed 10 February 2007).

The European Union always claimed full alignment with all the UN resolutions, which affirmed that the solution to the Cyprus problem will be based on a bi-zonal, bi-communal federation. Moreover, according to the top-level agreements of 1977 and 1979, the two Cypriot communities have formally accepted the UN directive for a federal settlement by the signature of their respective leaders. Thereby, the key issue is not only legal but also one of political accountability derived from past agreements. Since the accession of Cyprus in 2004, the European Union has stated repeatedly that the status quo in Cyprus is unacceptable. But while the European Union had said much about the need for negotiating a bi-communal, bi-zonal federal solution, and much about the non-recognition of the TRNC, it said little about the fact that the structure of the Republic of Cyprus is not the basis for a final settlement.

It is noteworthy that, as put to the referendum in 2004, the basic state structure proposed by the Annan Plan was far closer to the principles of the UN resolutions and the top-level Cyprus agreements than the basic structure of the Republic of Cyprus. More strikingly, the UN resolutions, the top-level agreements and the Annan Plan were completely contrary to the secessionist structure of the TRNC. The TC pro-solution movement and the Erdogan government fully understood that recognition of the TRNC, underpinned by the Turkish army, was untenable, particularly after Cyprus's accession to the European Union.³⁴

The GCs, however, have not fully grasped the fact that, short of a settlement, the Republic of Cyprus, even within the European Union, will never be restored to its original status, will never constitute the structure of the final settlement and will never be the institutional authority to implement the *acquis communautaire* in northern Cyprus. With accession, the GC government and the European Union agreed that any lifting of the suspension of the *acquis* in northern Cyprus will require a unanimous decision. The GCs thus secured a legal veto right to obstruct the implementation of the *acquis* in northern Cyprus. However, this strictly means that, under GC control, the Republic of Cyprus can only be the legal instrument that can prevent the extension of the *acquis* to northern Cyprus, not the instrument that can implement or enforce it.

Even though this was an assumed fact in the minds of EU leaders, it never led them to act on it in fear of empowering secessionist nationalists on the Turkish side and of eroding TC incentives for a settlement. However, without a final settlement, the long-term status of the Republic of Cyprus will become increasingly ambivalent, particularly in the eventuality that the international community concludes for a second time that the GCs are the intransigent side. If such a situation transpires following another international effort at a Cyprus resolution, similar to that of 2004, the GC side may come to the sad point of seeing northern Cyprus go the way of Kosovo with the consent of numerous EU Member States.

One can therefore presume that, as long as the Cyprus problem remains unresolved, just as the European Union holds has suspended the implementation of the *acquis communautaire* in northern Cyprus because the TRNC is an unrecognised entity, it may also suspend the premise that the Republic of Cyprus will perpetually be the recognised state, precisely because the republic does not

34. *Turkish Daily News*, "PM: Recognition of Greek Cypriots is a Reality" (3 May 2004), available: <<http://www.turkishdailynews.com.tr/>> (accessed 26 May 2004).

embody the structure of the final settlement agreed in principle by the GCs, TCs, Greece, Turkey and the United Nations.

In this perspective, the European Union may be compelled to address the EU-specific parameters of the Cyprus problem at the highest level of its deliberations, explicate all the anomalies that the Cyprus problem has infused into the European Union and assert that these aspects of the Cyprus problem constitute an EU problem that burdens not just the European Union but particularly the GC and TC leadership, as well as Turkey, Greece and the United Kingdom. From this perspective the EU Council may need to address Cyprus, not merely under its routine institutionalised deliberations but also under its extraordinary agenda, as the latter is the sole institutional avenue available to the European Union to fully address not only the clearly legal but also the complex political aspects of the Cyprus problem as distorters of the EU regime.

By 2007 it had been generally acknowledged that, since accession, the Cyprus problem had indeed become a unique European problem, this time not at the periphery but inside the European Union.³⁵ However, what was forgotten is that by the same token the complex array of EU anomalies has also become a new aspect of the Cyprus problem. In this sense, the European Union ought to stress to the GC and TC leadership, and their respective motherlands Greece and Turkey, that the challenge of resolving the Cyprus problem concerns not only Cyprus but also the European Union, in that the resolution of the Cyprus problem would coincide with the eradication of all the EU anomalies that Cyprus introduced into the Union since accession. The European Union will thus place a measure of political accountability on the Cypriot, Greek and Turkish leadership in reference to the European aspects of the Cyprus problem. Perhaps the EU Council needs to set up a systematic process of accountability on the progress towards a Cyprus resolution similar to the one supervising the harmonisation progress of acceding countries. After all, resolving the Cyprus problem is all about harmonising Cyprus to the EU regime, even if this is to occur post-accession.

The European Union and the New GC Presidency

Clearly, the overarching concern and priority for the European Union is for the Cypriot leaders to resume fully fledged, top-level negotiations for a final settlement. Indeed, with the GC elections of February 2008 ousting Papadopoulos in favour of Demitris Christofias, a traditionally pro-solution leader, the European Union is offered a new opportunity to assume a more proactive role in helping resolve the Cyprus problem. Since the GC elections, the situation in the Eastern Mediterranean is once again on a possible convergent path. The leaders of the GC and TC communities are eager pro-peace advocates. The Turkish government is ready to proceed with a Cyprus settlement so as to facilitate its European path at a time that the Erdogan government is in dire need of big strides towards Europeanising reforms. Furthermore, Greece is more than ready to see a Cyprus settlement at a time when it has redefined its national political, economic and security interests in terms of peace and cooperation with Turkey. Historical convergence in favour of a Cyprus settlement is possible, provided Turkey finds a way to avert another constitutional crisis in the standoff between the

35. International Crisis Group, *op. cit.*

military-backed, secular nationalists and the Islamist-rooted, governing pro-EU/reformist Justice and Development Party.

In light of the stalemate of 2004–2008, the European Union must go far beyond the general statements of the past, usually in a paragraph or two, that have characterised the European Union's post-2004 declaratory approaches to the Cyprus problem. Moving the Cyprus problem towards a final resolution will require far more substantive initiatives and involvement by the European Union.

In the final analysis, short of a comprehensive Cyprus settlement, there is no way for the European Union fully to align EU law and its political perspective on Cyprus and the Eastern Mediterranean. In this regard, two questions emerge as central to the European Union's Cyprus challenge. In view of the 2004 Cyprus failure and the new GC presidency of 2008, what strategies and approaches can the European Union pursue to empower negotiations for a final Cyprus settlement? In response to this question, the challenge for the European Union is actively to pursue and implement an array of positive incentives and structural support systems that would help bring the Cyprus negotiations to fruition. The second question concerns what pre- and post-settlement confidence-building strategies and approaches the European Union can recommend, pursue and institutionalise that may foster a process of inter-ethnic rapprochement, particularly during the Cyprus negotiations, and thereafter. In response to this question, the challenge is for the European Union to set up a creative system of confidence-building measures that would help to sustain inter-ethnic rapprochement within a new EU policy framework that facilitates a reorientation towards convergence of EU law and the European Union's political perspective on Cyprus and the region.

There is no doubt that GC President Christofias and his counterpart "President" Talat will face great challenges both as they proceed towards a negotiated settlement and thereafter as they attempt to render any agreement sustainable. In regard to both of these factors, the European Union, unlike in 2004, ought to play a formative and creative role. After all, in contrast to 2004, Cyprus is now also an EU matter pertinent to the inner functionality of the Union.

EU Provision of a New Facilitative Framework and Incentives for Cyprus Negotiations

If in the course of time the two Cypriot leaders agree on a comprehensive settlement plan, Christofias will be confronted with having to convince GC opinion that the plan is very different from the rejected Annan Plan of 2004. This is an inevitable consequence of the trauma that the Papadopoulos administration inflicted on GC opinion resulting from the manner in which it handled the 2004 UN peace plan. On the other hand, Talat will be confronted with having to convince TC opinion that the plan is not very different from the Annan Plan, as the latter was the basis on which the TC leadership, backed by Turkey, convinced the TCs to abandon secession. Persuading the respective communities to agree to a new plan will be difficult, particularly in view of the evolving media openness and free flow of information between the two communities—itsself a by-product of Europeanisation.

There is, however, one key issue that the European Union may help to prepare for and mediate that can provide formidable incentives for the GC side in the

likelihood of a new peace plan, while retaining elements of the Annan Plan that are deemed essential to the TCs, namely the early withdrawal of Turkish troops from Cyprus following the signing of an agreement. Here, the European Union needs to work with and convince Turkey that, in the interest of its accession process, it ought to agree that in the new peace plan all previous deadlines for the withdrawal of the Turkish troops from Cyprus will be brought forward. An agreed process for demilitarising Cyprus far sooner than the Annan Plan provided would greatly assist Christofias in disengaging GC opinion from the security fears and rejectionism of the Papadopoulos legacy.

In the course of negotiations for a final Cyprus settlement, the European Union may also introduce a reinforced financial aid package for the rapid rehabilitation and development of the TC community. The disbursement of funds would commence with the signing of a Cyprus agreement. Presenting the TCs with a reinforced financial aid package will not only sustain and strengthen the Turkish side's incentives for a settlement but may also induce greater flexibility in forging compromises on issues that are deemed vital to GCs.

Moreover, as the overarching regional system of governance, integrating democracy, peace, security and the rule of law, the European Union could also be included in the new plan as an additional guarantor of a reunited, federal Cyprus. The framework of guarantees, which has always been a great concern of each of the Cypriot communities, will thus be extended beyond the traditional ethno-guarantor motherlands, and the United Kingdom, to include all the EU Member States, at EU level. In anticipation of this new role, the European Union, together with the United Nations, may start as a guarantor of the implementation of an agreed settlement, so as to address directly a vital GC concern that had not been sufficiently dealt with in 2004. As a new guarantor, the European Union may also link the implementation of an agreed Cyprus settlement to Turkey's accession progress, as a way to allay GC suspicions of Turkey's intentions.

Another factor that could help generate momentum and incentives for agreeing to a final settlement would be for the United Kingdom, the former colonial ruler of Cyprus, to commit in advance of any negotiations that it will return the largest possible part, if not all, of its Cyprus sovereign bases to the new federal Cyprus whenever the GCs and TCs, together with Greece and Turkey, arrive at a final settlement. This would not only add a new constructive dimension to negotiating the territorial aspect of the Cyprus problem but would also diminish the capacity of GC nationalists to reawaken anti-colonial sentiments as a means of cultivating a rejectionist public opinion among the GCs, as they did successfully in 2004.

One of the first issues that predisposed GC opinion negatively towards the Annan Plan in 2004 was the question of who will be burdened with the cost of the settlement—a question that implied, by default, that it will be the wealthier GC community. A way to eliminating this controversial issue from GC opinion would be for the European Union, together with Greece and Turkey, to assume the financial cost of the Cyprus settlement. Put forward in advance of any Cyprus negotiation process, such an approach would engage the European Union, Greece and especially Turkey as constructive peace-enhancing respondents to GC concerns. This in turn will practically empower the GC and TC leaders to pursue their search for a comprehensive settlement and also to convince their respective constituencies of the merits of the new settlement plan.

Under the umbrella of the European Commission, the European Union could create a mini “Commission” specifically for the Eastern Mediterranean that would include Greece, the united Cyprus and Turkey for the purpose of launching an inter-ethnic/inter-state peace-building agenda in the area of trade, investment, education, culture, youth, sports and exchanges. Under such a structure, the European Union could establish a peace-promoting, civil society fund that would provide special economic incentives for GC–TC joint ventures in Cyprus, Greece and Turkey in each of the spheres mentioned above. This Commission-led regional instrument may be announced and designed in parallel with the Cyprus negotiations and activated with the signing of a Cyprus settlement.

Moreover, under the above-mentioned entity, preparations may be launched for the creation of a united Cyprus oil and natural gas consortium that will involve, among others, Greece and Turkey. Laying the groundwork for such a project may move in parallel with the negotiations, anticipating its finalisation and implementation soon after a Cyprus settlement comes into force. Unlike the near-warmongering exchanges of 2007, such an approach would not only transform the issue of energy exploration from a source of conflict to one of cooperation and reconciliation but also to a vital peace-sustaining factor grounded in common interests.

The EU Framework for Sustainable Confidence-building Measures

In parallel with such negotiation-enhancing actions, the European Union needs also to launch a broad, sustainable GC–TC rapprochement process in a manner that reinforces and complements track one negotiations. The effectiveness of such a project, however, is contingent on steering clear of the recognition versus non-recognition controversies that have obstructed rapprochement and have entrenched the polarisation between EU law and the European Union’s political objectives on Cyprus. A viable way of doing so would be to pursue a policy that introduces *a framework of qualifiers* which links all confidence-building measures and rapprochement initiatives to the anticipated final settlement. There are two interrelated key qualifiers that can achieve this, namely that all confidence-building initiatives be pursued under the condition that the TRNC, as an illegitimate state, will not accrue any form of recognition from the rapprochement process and that the Republic of Cyprus, as a state structure that does not constitute the final settlement, will not be imposed on the TCs in any way through the rapprochement process. Such qualifiers would considerably free confidence-building measures from the deadlock of the status quo, while simultaneously re-engaging the European Union as a conflict-resolution catalyst through a framework that realigns its political perspective and its legal regime in regard to Cyprus.

The setting up, supervision, management and implementation of an EU policy framework of qualifiers would be mandated to the European Commission. The Commission may thus assume a more proactive role in promoting rapprochement. Under the condition of no recognition of the TRNC and no imposition of the Republic of Cyprus, the Commission may proceed with the establishment of a Rapprochement Council that would initiate confidence-building projects and

even third-party organisations for the purpose of institutionalising and sustaining inter-ethnic peace building. As a mediating institutional agent, the Commission would proceed to work with the GC and TC sides, so as to flesh out specific bi-communal programmes and actions that become possible within the new framework of qualifiers. Under the auspices of the Commission, the Rapprochement Council may be comprised of the relevant authorities from the two Cypriot communities, civil society organisations and NGOs with a track record of inter-communal peace-building initiatives.

The European Union could back the effort of such a council financially with a peace programme similar to that implemented in Northern Ireland. The Rapprochement Council could be active throughout the interim phase, until a comprehensive settlement is achieved. Thereafter, the entity could be incorporated into the structure of the new united Cyprus as the basis for a Federal Ministry of Peace.

In the process of fostering inter-ethnic rapprochement under the provisions of the framework of qualifiers, the Commission will assume all the functions of state and of government that pertain to northern Cyprus when it comes to formalising agreements, managing EU funds, launching projects and implementing confidence-building measures.

Through this manner of promoting inter-ethnic rapprochement, the GCs will not be dealing with the TRNC but with the European Commission. And conversely, TC efforts to participate in the European Union will not be mediated by the problematic status of the TRNC but by the new mandated organ of the European Commission. In effect, the Commission will be holding in trust the functions of the TC federated state-to-be, until a bi-zonal, bi-communal federal Cyprus becomes established. The essence of this perspective is that until a final settlement is achieved, the Commission will be managing the state functions that pertain to northern Cyprus—an approach that emanates from both the illegitimate status of the TRNC and the fact that the structure of the Republic of Cyprus is not the basis for the reunification of Cyprus.

At the same time as the resumption of top-level negotiations for a bi-zonal, bi-communal federation, if such a policy framework of qualifiers were to be adopted by the European Union and managed by the Commission, it would alleviate the GC fear that openness towards ending TCs isolation would lead to recognition of the TRNC. It would also alleviate TC fears that in the process of establishing confidence-building measures the GCs would be attempting to impose on them the structure of the Republic of Cyprus instead of negotiating a new federal republic.

The suggested policy of qualifiers would also act as a deterrent to hardline nationalists on both sides of the Cyprus conflict, including intransigent nationalists in Greece and Turkey. An official EU policy of qualifiers would weaken the nationalists on the Greek side, who always push for and propagate intransigence on the grounds that behind every move by the Turkish side lies the intent to attain recognition for the illegal TRNC. An EU policy of qualifiers would also offset hardline nationalists on the Turkish side, who always push for and propagate a secessionist agenda on the grounds that behind every move by the GC government lies the intent to suppress, isolate and dominate the TCs through the power of the recognised, GC-run Republic of Cyprus.

On the positive side, an EU policy of qualifiers would open up the property-settlement process, as the Property Commission in northern Turkish Cyprus

will be placed under the qualifier of non-state recognition. In this way, GC refugees would be free finally to pursue restitution of their properties unimpeded, as the qualifier of non-recognition for the TRNC would offset the reason for which GC nationalists harassed those GC refugees who appealed to the Property Commission in northern Cyprus.

The appropriate rapprochement context may also be created that would free the TCs to intensify trade with the GC side across the green line. This would occur as the TC fear of absorption by the GC-controlled Republic of Cyprus would no longer hold, since the qualifiers would preclude the imposition of the structure of the Republic of Cyprus on northern Cyprus.

The enactment of an EU policy of qualifiers can help create the necessary politico-legal space for the establishment of numerous conflict-transcending, third entities that can help to manage interim rapprochement processes as well as interim solutions to various contingency aspects of the Cyprus problem. For example, certain categories of TC products that are not associated with the use of GC property in northern Cyprus could be allowed for trade directly with the EU market. The fact that such trading would be placed within the policy framework of qualifiers and managed by the temporary authority of the European Commission would offset GC objections that TC–EU trade would imply recognition of the TRNC. Under the same structure, the TCs may be enabled to participate in sports, university programmes and cultural events within the European Union without triggering the GC fear that they would be accruing direct or indirect recognition for the TRNC.

A framework of qualifiers under the European Commission could also create the conditions for advanced confidence-building measures. The Commission could initiate a process by which the Turkish army would disengage all along the ceasefire line or withdraw in part from northern Cyprus, with the GC government reducing compulsory military service from 26 months to a year. A freeze on arms imports could provide an additional dimension to building inter-ethnic confidence during the interim period.

Under the Commission's regime of qualifiers the parties concerned may readress the coupling of Turkey's extension of the Ankara Protocol and the opening of the ghost city of Famagusta. The Commission may lead the way in convincing Turkey to open its air and sea ports to Cyprus in exchange for opening the port city of Famagusta for TC and GC exports to the EU market. With the framework of qualifiers in place, and the management of the port city under the temporary authority of the Commission, the Turkish side would be assured that the Republic of Cyprus will not be imposed on the TCs and the GC side would be assured that TC trade with the European Union will in no way imply recognition of the TRNC.

Moreover, the framework of qualifiers may create the conditions for commencing badly needed rapprochement between the GC government and Turkey, in a manner that emulates the rapprochement that has been unfolding since 1999 between Greece and Turkey. A case in point would be the Turkish–Cyprus water project idea. A pipeline that would bring fresh water from Turkey directly to the TC and GC communities has been assessed as the least expensive and most efficient way to put an end to the worsening water crisis of the island. The fact that the idea has been discussed soon after the 2008 GC elections through the inter-communal technical committees attests to the timeliness of such rapprochement

projects between the GCs and Turkey, particularly as the press made it public with references to the idea that water can contribute to peace.³⁶

A final rapprochement idea for the Commission to initiate would be to elaborate a process within the legal and procedural parameters of EU decision making so as to put on hold the votes and seats in EU institutions that would be apportioned to TCs when the Cyprus problem is resolved. Particularly in view of the fact that constitutionally GCs and TCs are co-founders of the Republic of Cyprus, it would be prudent in the interest of inter-ethnic rapprochement to keep empty and on hold the TC seats and votes in the European Union in anticipation of a final Cyprus settlement. In contrast to the GC monopoly of all EU seats and votes since 2004, the suggested arrangement would help sustain the TC incentive for a settlement, while it would give the GC side the opportunity to exhibit magnanimity in the interests of peace and reconciliation, by way of offsetting the alienating impact their 2004 referendum vote had on the TCs. With the qualifiers in place, such an advance confidence-building measure would alleviate both the GC fear that TCs would acquire state recognition and the TC fear of GC hegemony through the European Union's institutions.

Conclusion

The preceding analysis is certainly not intended to be a recipe for how the European Union ought to approach Cyprus. Rather, it is an attempt to expose the EU anomalies resulting from the integration of a divided Cyprus into the Union, while furnishing an array of ideas and reflections of possible ways forward. The European Union may consider some or many of the ideas presented. However, what the European Union cannot afford to do is to remain inactive and passive by adopting anew the barren 2004–2008 approach of wait and see, of leaving everything to the Cypriot leaders. The European Union ought to assume its historic role as a peace-building system, elaborate a proactive peace-enhancing policy approach to the Cyprus problem and become fully engaged so as to bring its conflict-resolving and peace-building dynamic to full fruition in the Eastern Mediterranean region.

36. A. Avgousti, "Turkish Water Plan Could Solve Drought Crisis", *Cyprus Mail* (26 April 2008), available: <<http://www.cyprus-mail.com/news/>> (accessed 15 May 2008).