

# **CYPRUS AS LIGHTHOUSE OF THE EAST MEDITERRANEAN**

*Cover photograph:* Lighthouse of the old port of Kyrenia.

*To the last tango of  
Glafkos Clerides and Rauf Denktas.*

**CYPRUS AS LIGHTHOUSE  
OF THE EAST MEDITERRANEAN**

*SHAPING EU ACCESSION AND  
RE-UNIFICATION TOGETHER*

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AND  
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BRUSSELS**

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The present study is the exclusive initiative of CEPS. It has been neither commissioned nor financed by the European Union or any other interested party in relation to Cyprus. Michael Emerson is Senior Research Fellow and programme director of the 'Wider Europe' at CEPS. Nathalie Tocci, a CEPS Research Fellow, is a PhD candidate at the London School of Economics.

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ISBN 92-9079-377-5

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## ACKNOWLEDGEMENTS

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The authors have consulted widely on the basis of earlier versions of this document and are most appreciative of helpful comments and suggestions received notably from: *Mustafa Akinci, A.C. Afxentiou, Ertugul Apakan, Costas Apostolides, Michael Avraam, Hussein Bagçi, Mehmet Ali Birand, Chris Brewin, Costa Carras, Yannis Cassoulides, Donato Chiarini, George Christophides, Kypros Chrysostomides, Theodore Couloumbis, Bruno Coppieters, Robert Dann, Thomas Diez, Thanos Dokos, Jean-Francois Drevet, Dimitris Droutas, Andrew Duff, Alpay Durduran, Efthymios Efthymiadis, Sedat Ergin, Sadi Erguvenç, Riza Erkmenoglu, Tahsin Ertugruglu, Kursat Eser, Marietta Giannakou, Abdullah Gül, Ayla Gurel, Hayali Güven, David Hannay, Martin Harvey, Donald Horowitz, Kamran Inan, Panayiotis Ioakimidis, Theo Jans, Trond Jensen, Kerem Kiratli, Myrna Kleopas, Kornelios Korneliou, Paulina Lamposa, Vassos Lyssarides, Sülen Karabacak, Kemal Kirisci, Anna Korka, Michael Leigh, Sarah Ludford, Alecos Markides, Farid Mirbagheri, Petros Molyviatis, Erdil Nami, Altay Nevzat, Ergün Olgun, Soli Özel, Yannis Papadakis, Michalis Papapetrou, Elena Prokhorova, Özdem Sanberk, Taner Sami Selçuk, Dan Smith, Alvaro de Soto, Mumtaz Soysal, Ahmet Sozen, Zenon Stravinides, Stelios Stavrides, Dimitris Stefanou, Chistos Stylianides, Yiouli Taki, Mehmet Ali Talat, Andreas Theophanos, Theophiolos Theophilou, Panos Tsakaloyannis, Nicholas Tsenios, George Thoma, Nicos Trimikliniotis, Charalambos Tsardanides, Toumazos Tsielepis, Ilter Turkmen, William Wallace, Axel Sotiris Wallden, Keith Webb, Nicholas Whyte, Bruno de Witte, Yannis Valinakis, George Vassiliou, Isilay Yilmaz and Costas Zepos.*

The authors also benefited from extensive conversations with the *Dialogue Forum* of Greek and Turkish Cypriots organised by the International Peace Research Institute (PRIO), Oslo.

Of course the analysis and conclusions of the document are attributable only to the authors, and not in any way to the above or any other persons.

The drafting of this document was finalised on 27 March 2002.

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## EXECUTIVE SUMMARY

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Negotiations are now actively under way to resolve the Cyprus conflict, re-unify the island and secure the accession of the whole of the Cyprus to the European Union (EU) in the near future. Given these promising developments, but the naturally confidential nature of the negotiations (of which the authors have no inside knowledge), a paper such as the present one has to identify its purpose. Our idea has been to apply to the case of Cyprus a digest of information on:

- a) the experience of multi-tier government structures in advanced democracies, and in particular in bi-ethnic or multi-ethnic societies;
- b) the experience of how such structures can fit in with the evolving system of the European Union, and its policies and division of competences, with special reference to the case of Belgium; and
- c) models for exit from situations of inter-communal conflict.

*The paper is therefore a description of the tool kit of governance systems and EU policy mechanisms that could in principle be used to support the simultaneous re-unification and EU accession of Cyprus. The paper is not to be taken as recommending a solution, which only the principal parties can work out. Rather, it is a discussion of the options that the parties may consider, structured so as to be relevant to the negotiations. Where the text speaks of elements that 'would' be part of the solution, this is because they are either non-controversial or requirements of EU accession.*

We draw on the substantial work done by the UN in its 'Set of Ideas' of 1992, the text of which is reproduced in an annex. Even if that exercise failed to reach a conclusion, the document advanced many elements that had considerable support from the two parties at that time. What was missing then, both technically in the text and politically, was a sufficiently vivid and powerful incentive of EU accession to overcome the resistance to an agreement. That incentive does exist today, although some difficult issues remain to be resolved, and the further decade of separation since 1992 makes re-unification more difficult still.

### **Institutions**

Models of the political institutions that might be adopted in a re-unified Cyprus are described, but without labelling them as either federal or

confederal. The EU integration factor makes neither term adequate. We try to use neutral language wherever possible, i.e. avoiding terms that imply a choice not yet agreed by the parties. We therefore refer to the future Cyprus as a common state and member state of the UN and EU, composed of two constituent states.<sup>1</sup>

A key point of institutional design is to reconcile as best as possible the sometimes contradictory principles of political equality on the one hand (traditional priority for the Turkish side), versus fairness in representation and effectiveness in decision-making on the other (traditional priority for the Greek side).

Two methods for achieving these objectives are discussed in the political science literature, firstly techniques for guaranteeing power-sharing, and secondly techniques to induce convergent political behaviour between the communities. A blend of both approaches would seem useful, and examples are set out.

The representation of Cyprus and its communities in the institutions of the EU is sketched. Of particular importance will be the coordination of the position of Cyprus in EU policy-making between the common state and constituent state levels. Here the experience of Belgium, as a decentralised bi-ethnic/community member state of the EU, is worth close study.

The transition from the present situation and the future regime will require special arrangements. Here we make an important distinction between, on the one hand, short-term and purely technical transitional arrangements and, on the other hand, the idea of longer-term systemic evolution. Even if all the elements of the conflict are settled, it may not be possible or desirable to try to jump in one step to a new definitive constitutional regime.

### **Kompetenz Katalog**

This German expression, meaning the system of distribution of policy competences in a multi-tier governmental setting such as the EU, is used because it becomes the effective name of the EU's own work on this subject in the framework of the Convention initiated at Laeken in December 2001. The point for Cyprus is that it will be working out its own internal Kompetenz Katalog in parallel with the EU, with so much

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<sup>1</sup> The terms 'common state' and 'constituent states' may also become politicised, but we use them since they have no commonly accepted definition either in practice or the political science literature.

overlap between the two exercises that they have to be considered together. In practice the EU system is going to shape a large part of the internal Cyprus solution, which should make its agreement easier.

For *monetary policy* the whole of Cyprus would probably accede to the euro area after two years of EU membership. This transfers the policy competence largely to EU level, but leaves open the possibility for the central bank to delegate to its branches in the constituent states a role in supervising financial institutions (German model).

Much of the economic legal order for the *internal market* and freedom of movement of goods, services, labour and capital will be set in the so-called *acquis* (the acquired stock of EU laws). Special measures to accommodate the sensitive issue of acquisition of property could be envisaged and agreed with the EU. The rights deriving from the EU *acquis* should however be distinguished from refugee rights in Cyprus. The latter would be settled in the context of an initial settlement, while *acquis* rights may be implemented over time. Entry of the whole of Cyprus into the EU would also mean automatically joining the EU's *customs union* with Turkey and of course abolition of all present trade restrictions.

For the *budgetary system* of the re-unified Cyprus, there is a wealth of experience in advanced, multi-tier government systems, with clearly identified models for taxation, social security finance and revenue redistribution to choose from. These choices may be influenced, and pressures for inter-community redistribution eased, by grants and loans from the EU institutions. These funds would be largely aimed at *the economic catch-up of northern Cyprus*, which could proceed at an impressive speed as long as the political settlement is perceived as credible for investors. The tax revenues of the common state might naturally rely first of all on the value added tax and corporation tax.

In several sectors, such as *energy, transport and environment policy*, competences are likely to be shared by all three tiers of government – the EU, the common state and the constituent states. Experience within the EU, especially Belgium, suggest these allocations of competence may best be done at a quite disaggregated level.

The *education system* would surely be a competence of the constituent states; as the communities begin to mingle, however, special needs will in due course overlap the territorial borders, and there are some models to bear in mind here.

Axiomatically there would be single Cyprus *citizenship*. While the legal criteria will have to be established by the common state, aspects of its

implementation might be decentralised. The *movement of persons* across the external border will be heavily determined by EU and Schengen law, and special transitional arrangements could be envisaged by EU to avoid new restrictions such as visa requirements between Cyprus and Turkey.

*Foreign policy* would call for a major responsibility at the common state level, but here also modern Europe sees examples of partial decentralisation for the external aspects of sub-national policy competences. The demilitarised island would not need an army or defence policy (beyond international and EU guarantees).

### **Territory, refugees and security**

These aspects are in practice highly interdependent. Adjustments to the present territorial border could accommodate a considerable part of demands for refugee return. The present report does not presume to identify precise solutions on these questions but discusses some issues concerning refugee return and compensation, as well as design of the future security order in Cyprus.

On security guarantees attention is given to how the 1959 Treaty of Guarantee could be amended, partly through using some key provisions of the EU Treaties (Articles 6 and 7 of the TEU). A peacekeeping force would be needed for some time, presumably alongside a progressive demilitarisation of the island. As regards the organisation of peacekeeping forces, options are discussed for possible UN, NATO or EU roles, alongside forces from Greece and Turkey.

Concerning territorial readjustments, refugee return and compensation, detailed work has already been carried out by the UN, particularly in the 1992 Set of Ideas. Since then the problem of property rights has been subject to judgements by the European Court of Human Rights (ECHR). These decisions will no doubt affect the current negotiations and possible agreements. However, political agreements between the two communities, which would have the highest international legal status, would provide a fresh framework for future Court cases.

### **Conclusions**

In the course of preparing this report the authors have become increasingly persuaded that the simultaneous re-unification of Cyprus and accession to the EU could transform the political structures and interests that have up to now made it impossible to resolve the division of the island. More precisely, a large part of the future three-level organisation of government competences (EU, common state and constituent state) is

virtually prescribed in advance, given the requirements of EU accession, a presumption in favour of a largely decentralised assignment of competences to the constituent states, and the inevitable attribution of certain competences to the common state. This means that the area for possible contention between the two parties is much smaller than suggested by earlier confrontations of federal versus confederal models, and different conceptions of state sovereignty. The EU level would be supplying structures, guarantees and incentives that could hold together a bi-communal Cyprus, where otherwise centrifugal forces would be more likely to prevail. This view is not just theoretical speculation, since the ‘Belgian laboratory’ has already demonstrated how essential features of a bi-communal state can fit into the legal and political structures of the EU.

In addition, the other core elements for resolution of the conflict such as territory, refugees, property and security already saw considerable progress towards agreement in earlier negotiations. Moreover the EU itself has legal precedents that could accommodate some transitional derogations from standard EU law, where this would be vital to agreement between the two parties.

If in Cyprus the political will to succeed is sustained, the available tool kit seems to make a solution eminently feasible.

## CHAPTER 1 INTRODUCTION

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Much has been written on why and how the search for a solution to the Cyprus conflict got blocked for years and indeed decades.<sup>1</sup> Fortunately the situation has now changed. Since January 2002, negotiations have resumed between the two leaders, Glafcos Clerides and Rauf Denktas, with the participation of the UN special envoy, Alvaro de Soto. The leaders now speak of finding a solution by mid-2002, for a re-unified Cyprus to enter the European Union as a single member state as part of the forthcoming enlargement of the EU. A political decision by the EU to go ahead with the accession of Cyprus is expected at the end of 2002. Therefore the relevant task at hand is the working out of a solution to the island's division that would be integrated with the preparations for EU accession.

The long stalemate over Cyprus means that there is much ground to be made up in a short period of time. While southern Cyprus is well advanced in its preparations for accession, northern Cyprus has not yet begun. The political context also has greatly changed over the last decade, notably since the UN Secretary General last proposed his detailed 'Set of Ideas' for a solution in 1992 (see Annex C). Those ideas largely ignored the EU aspect, which was not at that time such a relevant factor for Cyprus. Today however the EU aspect greatly affects the design of the future constitution of a re-unified Cyprus. The importance of the EU's competences should now dilute the problem of competition for powers between the national and sub-national levels of government. The EU offers the financial means for northern Cyprus to make rapid progress in modernising its economy, and can also work out special transitional arrangements.

The assumption of this study is that a just and lasting settlement to the Cyprus conflict would deal directly with the basic needs and interests of the two communities. It would therefore ensure the re-unification of the island, respecting as much as possible principles of fairness and individual rights, essential to the Greek Cypriot community. It would also respect the political equality of the two constituent communities of Cyprus, and meet the essential Turkish Cypriot demands. A settlement would also meet the fundamental interests of other parties to the Cyprus conflict, including Greece, Turkey and the EU itself.

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<sup>1</sup> See, for example, Diez (2000), Dodd (1994), Emerson et al. (2001), Tocci (2000), Richmond (1998), Stivachtis (2000) and Trimikliniotis (2000).

We try to avoid value-loaded language, especially where certain terms have already been abused in past political arguments between the two communities in Cyprus. We try to avoid reference to the Republic of Cyprus (RoC) and the Turkish Republic of Northern Cyprus (TRNC), given the political sensitivities in the use of these terms. When we find it unavoidable to use this terminology, we use it in a strictly neutral way; the RoC is used when referring to the internationally recognised government of the south, and the TRNC refers to the government in the north of Cyprus recognised only by Turkey. We also do not use the language of federation or confederation, since the EU dimension means that the future Cyprus in practice will not conform to either model in any conventional sense of the terms. The EU itself is somewhat federal, somewhat confederal, and somewhat *sui generis*. The principal parties will of course choose their own language. We have to use some names in what follows, but do this for the strictly practical purpose of drafting the report and not for political reasons. We could imagine that the re-unified Cyprus might be termed a ‘common state’, and its two components ‘constituent states’, and we use these terms in places.<sup>2</sup> We simply use ‘Cyprus’ as the name for the future re-unified state. We call the two territorial entities ‘northern’ and ‘southern’ Cyprus respectively where convenient for drafting purposes. We use the terms ‘Greek’ and ‘Turkish’ to refer to the two communities of peoples, as distinct to territories. Today the territories and communities in Cyprus completely coincide, but this may gradually change over time with renewed openness and freedoms across the whole of the island.

A Cyprus settlement could also benefit from downplaying abstract notions of sovereignty and statehood. Sovereignty could be said simply to lie in a new constitution, which would determine the institutional structure and distribution of competences between the levels of government. The constitution would guarantee the maximum security and institutional protection to both communities in order to prevent the domination of one over the other. It might also avoid the establishment of legal hierarchy between levels of government. Statehood, citizenship and identity could come to be understood, as increasingly they are in the EU, in terms of multiple layers – European, national, regional, community etc. The Belgian case illustrates that there can be different answers to the question of legal precedence or hierarchy between the levels of government (common and constituent states), even in the EU where the European law always has precedence and the member states are responsible for its implementation. (Belgium actually reconciles equality

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<sup>2</sup> The UN currently uses the terms ‘common state’ and ‘component states’.

of rank between its federal and regional levels with the precedence of EU law - see section 2.3.4.)

If in places this document seems to be more about Belgium than Cyprus, this is deliberate. The authors do not pretend to be saying what the precise solution *should be* – this can only be the responsibility of Cypriots. The idea is to make visible the instruments that are available in the tool kit. In particular there have been important developments in recent years not only in the EU system, but also in how these developments have interacted with reform of the Belgian state. While all cases of inter-ethnic tensions and conflict differ, the Belgian model for pacifying inter-ethnic tensions within the EU framework is by far the most relevant model for Cyprus to reflect on. Belgium is a small-to-medium sized state with two main cultural communities, and it has restructured its political system (in fact during the period of Cyprus' division) in several stages from being a centralised state to a largely decentralised one.

If successfully concluded, the re-unification of Cyprus simultaneously with accession to the EU would be a remarkable political achievement. It could come to be another example of the European method of conflict resolution, following the recent case of Northern Ireland whose easing if not virtual settlement in recent years was facilitated by its inclusion in the EU framework, and the gradual progress in transforming the multiple conflicts of the Balkans through Europeanisation of the whole region, as well as the earlier historic process of Europe's post-second world war reconciliation. It has to be said that in the case of Cyprus in the last decade the EU dimension was more 'part of the problem' than 'part of the solution', since the negotiation process for EU accession with only the south of the island deepened the divergence between the two communities and aggravated Greek-Turkish tensions. However the potential for the EU factor to be now 'part of the solution' is still important. If this solution were achieved within the course of 2002, in its fundamental political aspects if not yet of course in all details of implementation, Cyprus could come to be seen, in the words we heard from someone of the region, as 'a new lighthouse of the East Mediterranean'. It might provide hope and inspiration for those only a few minutes flying time away from Cyprus, who are today still locked in the deepest and bitterest of ethno-nationalist conflicts.



## CHAPTER 2 INSTITUTIONS

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One may consider two approaches, both conceptually and in practice, for designing the institutional reconstruction of Cyprus after its several decades of division: 1) a ‘big bang’, whereby a new constitution is agreed and brought into force; or 2) a ‘step-by-step’ approach, with perhaps a sequence of important systemic reforms over a period of twenty years or so. Under the ‘big bang’ approach the intention would be to work out a more or less definitive system, or at least one that would last for many years. Under the ‘step-by-step’ approach the intention would be to give time for re-integration of the people and economy to progress and for trust between the communities to be re-established, and to avoid trying to anticipate what the definitive constitutional system might look like. This choice of strategy would affect the nature of the transition arrangements. In the first case they would be essentially technical and short-run. In the second case the transition merges into a continuing process of systemic evolution, in which the ‘process’ is of essence. However a possible step-by-step approach to institutional questions should not entail postponing the settlement of any of the core elements of the conflict, such as territory, property and refugees.

The UN’s ‘Set of Ideas’ of 1992 tended towards the first conception. However ten years have since elapsed, and it is natural to expect that the longer the period of separation under conditions of frozen conflict, the longer will be the period of subsequent reconciliation and re-integration.

In what follows, we start with basically the first approach, discussing the institutions of the common and constituent states within the framework of the ‘Set of Ideas’. But then we introduce the EU dimension, which makes the whole question a three-tier game, rather than a two-tier game. We observe that in the particular case of Belgium the role of the institutions of the ‘common state’ is greatly affected by this EU dimension, in ways that may be pertinent for Cyprus. We end the chapter with the second approach, that of viewing the institutional issues as part of a long process, one that begins simply, and then builds up institutionally alongside the effective re-integration of the peoples and economy. The process may be a continuous one to the point of having no pre-determined final destination, as is true of both the EU itself and Belgium. To avoid excessive complication we do not try to sketch the whole process, but just suggest some of its elements.

It should become apparent that, while the authors are not taking a position on the best model for Cyprus, we are pointing to a range of variables available for compromise positions within the spectrum ranging from a ‘big bang’ solution through to a ‘minimal first step’ approach. We also find that to a substantial degree EU accession would pre-determine much of the systemic design of a future re-unified Cyprus.

## 2.1 Institutions of the common state of Cyprus

### 2.1.1 Institutional concepts

The institutions of the common state of Cyprus would have to be crafted to bridge the apparently contradictory principles traditionally necessary for a settlement: on the one hand political equality between the two communities and the prevention of domination of one community over the other, and on the other hand effectiveness in decision-making and inter-communal reconciliation.

Political scientists identify two approaches for achieving these objectives, which we shall call ‘power-sharing’ and ‘incentives for convergence’ (in preference to some academic terms that are less user-friendly).<sup>3</sup> Of these two main ideas, the first model (‘power-sharing’) provides guarantees for the representation of different community groups in institutions or electoral mechanisms, so as to protect numerical minorities from being consistently over-ruled or otherwise being exposed to unduly weak positions in power structures. The second model (‘incentives for convergence’) seeks to design institutions and electoral mechanisms that can induce political moderation by representatives of community groups towards each other. Rather than provide guarantees in the form of quotas in ‘power-sharing’, the ‘convergence’ approach conditions behaviour. The two approaches are not mutually exclusive, and can be blended.

*Power sharing.*<sup>4</sup> Such mechanisms can take many different forms in practice, including proportional representation in the electoral system, decentralisation of competences and mutual vetoes in order to ensure that the smaller community is not over-ridden by decisions taken by the larger one. However in a country such as Cyprus, proportional representation would not safeguard the smaller community’s security and adequate representation in public institutions.

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<sup>3</sup> ‘Power-sharing’ is used here to represent ideas called in the literature ‘consociationalism’ and ‘explicitism’. ‘Convergence’ is here used for what some scholars call ‘centripetal strategies for reconciliation’. See following footnotes for references.

<sup>4</sup> See Lijphart (1977, 1968 and 1986).

Another group of techniques involves explicit recognition of communal groups via reserved seats for representatives of different communities.<sup>5</sup> Hence, in the executive, the legislature and the judiciary, a fixed percentage of seats may be reserved for the demographically smaller community. This percentage may be higher (although not necessarily reaching a numerical equality) than the number of seats that the smaller community would be able to secure through simple proportional representation. In elections, there can be separate electoral rolls for different communities in order to ensure that the smaller community is able to elect its 'own' representatives. Through these mechanisms political equality between the communities can be secured at the common state level of government.

However, these power-sharing mechanisms should not be expected to work in favour of inter-communal reconciliation and governmental effectiveness. A major criticism of these devices is that they replicate rather than abate inter-communal divisions. As a consequence these divisions may lead to deadlock in decision-making at the central level of government. This is indeed the criticism often made by the Greek Cypriot community of the 1960 constitutional arrangements. The 1960 institutional arrangements, which provided for extensive power-sharing provisions, were criticised both for their unworkability and for their enhancement of inter-communal division. In deeply divided societies such as Cyprus, which also have demographically unbalanced communities, power-sharing mechanisms are essential to guarantee political equality and security for the smaller community. Yet exclusive reliance upon these principles may obstruct the breakdown of inter-community barriers by entrenching segments and rigidly defining politics in divisive terms.

*Incentives for convergence.* Inter-communal reconciliation and effectiveness in government may be secured through the complementary use of convergence mechanisms. These would see the establishment of institutions and electoral mechanisms that encourage cooperation and discourage extremism and conflictual behaviour. Electoral laws can be used as mechanisms to encourage convergent behaviour.<sup>6</sup> The idea is to offer sufficient electoral incentives for campaigning politicians to appeal to voters from 'other' groups and thus display accommodative behaviour.

One mechanism to attain convergent electoral results is '*alternative voting*', where the voter expresses a ranking of his choices. In a single-

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<sup>5</sup> See Reilly and Reynolds (1999).

<sup>6</sup> See Horowitz (1985, 1990 and 1991).

member electoral district, if no candidate wins over 50% of 'first preferences' (which would normally come from the candidate's 'own' community), lower order preferences (many from votes from the 'other' community) would be transferred or pooled until a majority winner has emerged. The elected representative would have thus appealed to communities other than his own.

A second mechanism is '*cross-voting*', which is a stronger way of achieving similar results. Under cross-voting the electoral system explicitly identifies the community of the candidate and the voter. In a bi-communal polity, for example, the voter may have two votes, of which one must be cast in favour of a candidate of his own community, and the other for a candidate of the other community. This may become a hybrid system of the power-sharing and convergence incentive approaches, since the number of seats allocated to each community may be guaranteed, but the voice of the 'other' community can work in favour of moderate candidates appealing to both communities.<sup>7</sup>

In the case of Cyprus, where the two communities would be territorially concentrated (at least initially) and so constituencies would be ethnically homogenous, the alternative voting system would fail to produce the desired results. Candidates would need to do no more than secure the highest number of first preferences from their own group. Moreover, the numerical difference between the two communities would entail that convergence mechanisms would only be effective in the election of Turkish Cypriot parliamentarians. Both the alternative vote and the cross-voting mechanisms would also suffer from insufficient democratic legitimacy. The elected parliamentarians under these systems may be the least unpopular (to the 'other' community), rather than the most popular (amongst their 'own' community). The cross-voting mechanism also raises a further problem of democratic legitimacy. Given the numerical imbalance between the two Cypriot communities, if each community were to have the same share of influence on the election of parliamentarians from the 'other community', a Greek Cypriot vote would weigh less than a Turkish Cypriot vote.

While the 'power-sharing' and 'convergence incentive' approaches are often presented as alternatives, they are by no means mutually exclusive. Power-sharing mechanisms guarantee *ex ante* representation and decision-making power to the smaller community, whereas convergence mechanisms influence more precisely who is to be elected (i.e. politicians

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<sup>7</sup> For an exposition of cross-voting applied to the case of Cyprus, see Report No. 38 (1995) of the 'Friends of Cyprus', a committee mainly composed of British parliamentarians (<http://www.friendsofcyprus.org>).

appealing to the ‘other’ community as well). The legislature, executive and judiciary of the future common state of Cyprus could benefit from a blend of these different principles to fit the specific characteristics of the island.<sup>8</sup> Examples are suggested below.

### 2.1.2 *Legislature*

If various earlier UN proposals were followed, the Cyprus common state would have a bi-cameral legislature, although the alternative of having initially just one parliamentary body might be considered still, especially if the functions of the common state are initially relatively light.

Following a power-sharing logic, each community would occupy a particular share of the seats. According to the ‘Set of Ideas’ the predetermined quotas would be 70:30 for the lower house, and 50:50 for the upper house.

Reserved community seats in parliament are currently used in several countries, including Jordan (Christians and Circassians), India (for different tribes and castes), Pakistan (for non-Muslim minorities) as well as Croatia, Slovenia and Montenegro. Most interesting perhaps is the case of Lebanon where, as in Cyprus under the 1960 Constitution, reserved seats for the different confessions have reflected a political deal rather than the demographic balance on the ground. Despite a Muslim majority of voters (57% of the total, of which 25% are Sunni, 25% Shi’ite, 6% Druze and 1% Alawite), seats between Christians and Muslims are shared equally (64 seats reserved for both Muslims and Christians). This equalisation took place in the aftermath of the civil war, before which reserved quotas had provided for a 6:5 ratio in favour of the Christian demographic minority.

Alternatively there could be reserved seats for territorial representation: i.e. for northern and southern constituent state representatives. Naturally the outcome in practice would be identical to that yielded through guaranteed community representation so long as communities and territories overlapped in Cyprus. However, if and when the constituent states were to become ethnically non-homogenous, the political implications would be significantly different. Territorial representation may be appealing in theory, in so far as it does not classify MPs explicitly according to ethnic/religious affiliation. Indeed territorial representation is used in Belgium in Flanders and Wallonia, rather than cultural representation. However, in the case of Cyprus where the demographic

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<sup>8</sup> For an assessment of the relative advantages of consociational vs. centripetal strategies of reconciliation, see Deschouwer and Jans (1996).

distribution is significantly more unbalanced, territorial representation would mean not only proportional representation of Turkish Cypriot MPs, but also reduced Turkish Cypriot incentives to allow Greek Cypriot citizens to settle in northern Cyprus.

For the design of the electoral system, the Turkish Cypriots have tended to demand separate electoral rolls for Greek and Turkish Cypriots. The Greek Cypriots have argued that separate rolls would discourage inter-communal reconciliation and the emergence of a 'Cypriot' identity. They have been supporting instead a single list of the whole population, but with quota reservation of seats by community. In essence this would follow the electoral model adopted by Lebanon, where there are reserved seats for the various confessional groups, but all Lebanese voters are entitled to vote for any candidate in their constituency irrespective of their confession.<sup>9</sup>

However, unified lists might entail that the Turkish Cypriot parliamentarians would not be representative of their community, as they would have been elected predominantly by Greek Cypriot votes, given the demographic balance on the island. Unlike in Lebanon, where the numbers of voting Christians and Muslims are not far from equal (57:43), in Cyprus there would still be a predominant majority of Greek Cypriot voters (approximately 80%). A similar controversy exists in Bosnia-Herzegovina, where in the election of the Croat member of the Presidency, ethnic Croat voters fear they could be outvoted by Muslim voters in the selection of a Croat candidate.

Nonetheless, one could imagine that, while maintaining reserved seats and separate lists, MPs might be elected through the support of the 'other' community. This could be used for either or both of two systems of seats: a) separate community lists, or b) a mix of pan-Cyprus and separate community lists. If only separate lists were used, systems such as cross-voting could be considered. A mix of pan-Cyprus and separate lists instead would be like the future model for the European Parliament, where a limited number of MEPs will be elected through pan-European lists. In Cyprus a number of parliamentarians from each community (20% or 30% for example) would be elected from the entire population of the island, still following a 7:3 ratio. This alternative would be simpler and would avoid the problems of democratic legitimacy of the cross-voting system but may on the other hand lead to less convergent political behaviour compared with cross-voting.

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<sup>9</sup> For example in a constituency where there are four available seats, three reserved for Maronites and one reserved for a Shi'ite, the voter can choose a maximum of three Maronite candidates and one Shi'ite candidate.

For the upper house an alternative system could be appointment by the constituent state governments. This would reflect the practice in Germany, where the Bundesrat is composed of members appointed by the governments of the Länder. (It was also the original practice of the United States of America, under Article I.3 of the 1783 Constitution, altered in 1913.) This would ensure that the governments of the two constituent entities were tied into the legislature of the common state in the closest possible way. In the United States this practice gradually changed to direct election, and the path could perhaps be left open for this development in Cyprus as well, once the inter-institutional arrangements have sufficiently settled down.

A variant of this approach would be for the constituent state governments to appoint members of their own parliaments to serve as 'double-hatted' representatives.

The principle of political equality between the two communities would favour the approval of all laws by both houses of parliament. In addition, power-sharing logic would suggest that, in the areas of greatest sensitivity, the voting rules could give a higher level of guarantee against one community being overridden. The 'Set of Ideas' advanced ideas along these lines, notably that separate majorities of Greek and Turkish Cypriot representatives would be required in the lower house for foreign and security policy, federal budget and taxation, immigration and citizenship.

The Greek Cypriot community did not approve of the idea of separate majorities, arguing that, during the 1960-63 years of the bi-communal Republic, the requirement of separate majorities led to deadlock in decision-making on key issues such as income taxation and municipalities. It is thus important to establish mechanisms for breaking out of deadlock in the event of blocked legislation in the future. On this matter, the 'Set of Ideas' proposed that in the event of deadlock in decision-making, the President of the House in which the 'quorum' is not reached during two consecutive meetings would call an extraordinary meeting. At this meeting a quorum would be reached if there was 50% support in the upper house and 30% support in the lower house. Hence, hypothetically if either the Greek or the Turkish Cypriot representatives were to block legislation in future in either house, the representatives from the other community from that house (i.e. all the 30 Turkish Cypriot MPs acting together in the case of a Greek Cypriot boycott in the lower house for example) could push the bill through.

### 2.1.3 *Executive*

So far discussions concerning the executive of the future state of Cyprus have assumed a continuation of the 1960 presidential system. The Executive of the common state of Cyprus would then be composed of a President, a Vice President and a Council of Ministers. Divergences between the two communities have revolved around questions such as whether the presidency should rotate, and if so what veto rights the President and Vice Presidents would have.

During the current round of negotiations, the parties may also consider the establishment of a parliamentary system instead of a presidential one. This paper will not enter into a discussion of the merits of one system as opposed to the other, nor will it make specific recommendations about how the executive should be shaped. However, it should be noted that if the leaders were to opt for a presidential system, the importance of the legislature and its electoral system would be diluted. Hence, the need to institutionalise mechanisms to safeguard principles of political equality, inter-communal reconciliation and government effectiveness also in the executive. This again would call for an appropriate mix of power-sharing and convergence mechanisms in the executive as well as the legislature.

For example, in a system in which the President and the Vice President would not come from the same community and would be elected by the two communities separately as suggested in past proposals, some electoral incentive for inter-group moderation may be called for. One could imagine that the legislature would nominate the presidential (and vice-presidential) candidates. In order to be nominated the candidate would have to gain the support of parliamentarians from both communities. Each Turkish Cypriot candidate would have received the support of a certain number of Greek Cypriot MPs from either house of parliament. The opposite would be true for Greek Cypriot candidates. Hence, although there would be separate elections for the two communities, the nomination procedure would ensure that the candidates were not hostile to the community to which they did not belong.

Regarding the Council of Ministers, the 'Set of Ideas' proposed that there would be ten members responsible for the major policy areas at the central level. In a common state of Cyprus within the European Union these would include foreign affairs, European affairs, economy and home affairs. Depending on the degree of shared competences between the two levels of government in Cyprus, there could also be common state ministries for transport, communications, energy and environment. The 'Set of Ideas' proposed that the Ministers would be nominated by the President and Vice President on the basis of consensus. As in the 1960



Constitution and proposed in the ‘Set of Ideas’, community quotas would be also set in the Council of Ministers on a 7:3 ratio, with the Turkish Cypriot quota including control of at least one major ministry such as foreign, economy or home affairs, to which one would now add European affairs.

Following again the power-sharing guidelines of the ‘Set of Ideas’, the President and the Vice President would draw up the Council agenda together and decisions would be taken in the Council by majority vote. However on questions relating to sensitive inter-communal matters such as foreign and European affairs, economy, citizenship and immigration, the President and Vice President would each retain a last-resort veto power concerning both executive and legislative decisions.

The Presidential/Vice Presidential veto powers are insisted upon by the Turkish Cypriot community, which given its position as a demographic minority is fearful of allowing key decisions at the common state level being taken against its interests. In response the Greek Cypriot community argues that an extensive right of veto would lead to deadlock in policy-making. Indeed these veto powers led to deadlock over questions such as the formation of a Cypriot army during the short-lived existence of the bi-communal Republic of Cyprus in 1960-63.

In order to safeguard inter-communal reconciliation and government effectiveness it is therefore of critical importance to develop and institutionalise dispute resolution mechanisms as part of the common state institutions and practices. One could imagine, that, in the event of a deadlock in decision-making due to the exercise of veto power by the President or the Vice President, the matter might be referred to an EU High Representative for Cyprus, who would naturally not come from a member state that was an interested party. The High Representative would engage with the conflicting parties in the attempt to find a consensual agreement. If conciliation proved impossible, the High Representative might even have final authority and arbitration rights over the matter causing deadlock in decision-making.

#### **2.1.4 *Judiciary***

At the common state level the judiciary would include a Supreme Court entrusted with the task of interpreting the Constitution. The 1960 Constitution also provided for a High Court. In a new common state of Cyprus a High Court would deal with cases affecting the common state areas of exclusive or shared competence. Alternatively, a single common state Court could both deal with constitutional issues and with common state laws.

*Box 1. The art of the Belgian compromise in enforcing European law*

It is recognised that the member state (Belgium) is always responsible to the EU for the implementation of European law. However some case law now illustrates how this can work in practice in situations in which there is no legal hierarchy between two levels of government within the Member State, as in Belgium where the federal and federated levels have equal rank. In principle there is a contradiction and a problem here, since the European law always takes precedence over national or sub-national law, and the Member State is responsible for its implementation. In a recent case the Flemish Parliament refused to respect EU competition policy rules for the contracting the renovation of its buildings. When the Belgian authorities drew this violation to the attention of the president of the Flemish Parliament, they received the reply that it was none of their business. The case was therefore referred to the European Court of Justice by the EU Commission, as a matter of *EU Commission v. Belgium*. However the Belgian authorities have made it clear that if a regional government is found guilty of violation of European law, they and not the Belgian state will have to pay the fine (by deduction by the federal ministry of finance from the share of tax revenues collected at the centre and redistributed to the regions). The Belgian state itself does not have to, and does not want to issue an injunction to its regional governments, given their equivalence of legal rank within Belgium. For the same reason the Belgian constitutional court or high court of justice will not be involved. Thus the solution is that the EU institutions (Commission and Court of Justice) effectively take on the burden of enforcing implementation at the sub-national level, even if the EU legal principle is that the member state is responsible. However in the extreme case that a region refuses to comply with the decision of the European Court of Justice, there is provision for the federal state to take over legal competence for the matter, known as the ‘right of substitution’. So far this right has never been exercised by the Belgian federal level.

A proposal was made by twenty EU regions in September 2000 to secure the direct access of constitutional regions to the ECJ. The regions demand direct access to the Court both to defend themselves in the case of alleged non-implementation of EU legislation or to challenge EU institutions if their competences are being impinged upon by the supra-national level.

*Source:* De Schoutheete de Tervarent (1999).

As in the 1960 Constitution and the ‘Set of Ideas’, there would be an equal number of Greek and Turkish Cypriot judges in the Supreme Court, with either a ‘neutral president’ (as provided for in the 1960 Constitution) or with a rotating Greek Cypriot or Turkish Cypriot President (as suggested by the UN). However, in order to ensure the smooth functioning of the common state judicial system, dispute-resolving

mechanisms would also need to be introduced in the event of deadlock within the Court. These could take the form of a casting vote by a neutral judge from an EU member state that was not an interested party, or by a rotating president of the Court.

A separate question is how contested issues of implementation of EU (EC) law would be handled. One orthodox position would be to follow the legal principle that the member state of the EU is responsible for implementation of EU (EC) law on its territory, and the High Court of the common state would have this function in Cyprus. However that is not the only way, as the Belgian model has shown – see Box 1.

## **2.2 Institutions of constituent states of Cyprus**

This section follows the standard presumption of two constituent states. It may be mentioned that recently there has been aired in the media the idea of a third zone. While this seems highly unlikely to be retained by the negotiating parties, there some issues arising here that merit some discussion. This is done separately in Box 2.

### **2.2.1 *Legislature***

Northern and southern Cyprus would have their own legislatures and would presumably be free to determine the electoral laws governing their constituent state elections. The constituent state parliaments would legislate on all policy areas apart from those assigned by the constitution to the common state level of government.

### **2.2.2 *Executive***

Northern and southern Cyprus would also have their separate governments, dealing with all policy areas that the constitution does not exclusively reserve to the common state. If Cyprus were to adopt a presidential system of governance, the president and vice president of the common state could also be the heads of government of northern and southern Cyprus respectively. The two constituent states, while enjoying identical powers, would be free to organise separate executive structures.

*Box 2. The third zone proposal*

On 4 March 2002, a Turkish Cypriot newspaper, *Afrika*, published a proposal for a third 'bi-communal' zone in Cyprus. While the anonymity of the *Afrika* proposals makes it impossible to make a correct reference to the source (of which the present authors have no knowledge), the ideas received attention in both northern and southern Cyprus, and therefore call for some comment. The article suggested a constitutional structure with three regions and two communities. The third (bi-communal) region would be governed by the federal authorities and would comprise 24% of the island's territory (the ratio of territory of southern and northern Cyprus would then be 52% and 24%, respectively). A third bi-communal zone may appear an attractive proposition in so far as it would create a certain area in which the communities could start living together again. It also bears some comparison with the Belgian model (three regions, the third being bilingual Brussels, and two communities).

Upon closer examination, however, the idea would create fresh difficulties for the negotiating process in Cyprus. First it would complicate discussions on territorial readjustment and refugee return. From which area would the third zone come? Turkish Cypriots could feel that the third zone might create a backdoor route for a greater reduction of territory under their control. Greek Cypriots might feel that most of the land destined to the third zone could otherwise be transferred to Greek Cypriot administration. The third zone would also complicate the issue of refugee return. Finally, the third zone would create new uncertainties over the political balance between the two communities in the third zone.

However, an alternative idea, which would present fewer complications for the negotiations on territory, refugees or institutions, but might achieve similar bi-communal results on a smaller scale, would be to create bi-communal joint councils for local government services for cities such as Nicosia and Famagusta-Vorosha. Such joint city administrations would deal with local government services that were territorial in nature. Community services (education, culture, religion, etc.) would instead remain under the control of constituent state authorities. This could be analogous to features of bilingual Brussels.

**2.2.3 Judiciary**

Following the partition of the island, the Turkish Federated State of Cyprus (1975-83) and the Turkish Republic of Northern Cyprus (1983-present) retained the same criminal and civil codes inherited from British colonial rule. The same is true for the Republic of Cyprus. Although these legal codes have not fundamentally changed, over the course of

decades both sides have amended them. In the case of the TRNC, new laws or amendments have not systematically followed the Turkish model (or any other) nor have the amendments been very substantial.

The current status of the two legal codes, with their limited differences, would probably be accepted as the starting point within a re-unified island. There would therefore be independent judiciaries in northern and southern Cyprus, responsible for the areas of competence of the two constituent states. The US federal system is a reminder of the feasibility of enduring differences in state legal systems, and independence of their judiciaries for matters of state law. Even in the case of the United Kingdom, Scotland has retained a largely autonomous legal system. It might later be agreed to aim for legal harmonisation and possible re-unification. This would also occur within the EU context of harmonisation in particular policy fields.

The death penalty in the TRNC has been revoked for almost all crimes and it is effectively never used. But it has not yet been totally abolished and this would no doubt be a requirement for the EU. It seems unlikely that there would be significant resistance to this in northern Cyprus.

### **2.3 The representation of Cyprus in EU institutions**

#### **2.3.1 *European Parliament***

Under the Treaty of Nice, Cyprus is entitled to six members of the European Parliament. Following the same power-sharing provisions as for the lower house of the common state parliament, one could imagine that four MEPs would be elected by and from the Greek Cypriot community, and two by and from the Turkish Cypriot community. The method of election might well be the same as that for the lower house of parliament of the common state.

#### **2.3.2 *European Commission***

Under the Treaty of Nice each member state would be entitled to one Commissioner up until the Union reaches 25 members. Given that Cyprus would be included in the first wave of accessions in 2004, it would be entitled to one Commissioner per term up until the next expansion of the EU. One could thus imagine that there would be a system of rotation between a Greek and a Turkish Cypriot Commissioner, analogous to Belgian practice.

### 2.3.3 *The Council of Ministers and Article 146*

There is a seemingly banal piece of legal drafting in the Treaty establishing the European Union that would, however, be of considerable interest to Cyprus. Article 146 reads:

The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.

While this wording may appear prosaic, its significance is that it replaced a former legal ruling that only ministers or state secretaries of *national governments* could represent the member state in the EU Councils. The change in the new text was negotiated in 1991 at the insistence of two of the EU's federalised states, Belgium and Germany, in order to permit their governments to be represented on occasions by ministers from *sub-national governments*. These demands had resulted from the increasing tendency of the EU to legislate in domains of policy that are mostly or exclusively sub-national government competences in the member states that have multi-tier structures. This can also be viewed as an example of the 'post-modern' Europe, where the nation state has relinquished certain responsibilities to the two-way movement of Europeanisation and regionalisation, or a sign of the emerging 'Europe of the regions'.

When Belgium and Germany pressed for this provision, the response of other member states was in the end to acquiesce, but on condition that there could be *only one* representative who could speak and vote in the Council, and that he or she had to be authorised to speak for the member state as a whole. The Article 146 mechanism has in practice become more interesting for Belgium than for Germany, both because of the greater degree of decentralisation in Belgium and because Belgian has essentially only two large sub-national entities, whereas Germany has 17 Länder. This means that the task of representation and coordination is much more interesting and manageable for Belgium than it is for Germany.

With the launch of the Convention on the Future of Europe in March 2002, there are already further developments in line for debate that would imply carrying the distinct representation of sub-national entities a step further. Six sub-national entities (Flanders and Wallonia, Bavaria and Nord-Rhein Westphalia, Catalonia and Scotland) have joined forces to propose that the qualified majority votes of their member states (Belgium, Germany, Spain and the UK) be split to give them a separate vote. The model might, extending the provisions of Article 146, still call for only one voice from the member state to speak at the Council, but allow the votes cast to be split. While unlikely to be accepted at this stage, and sure

to encounter serious opposition, the proposal is nonetheless an interesting idea in the direction of deepening the ‘Europe of the regions’ concept.

In the case of Cyprus, the idea of split votes could have important advantages and disadvantages to both communities. Splitting votes would allow the Greek Cypriot community to have full control over their share of the Cyprus vote, which would presumably be larger than that of the Turkish Cypriots; i.e., the Greek Cypriot share of the Cyprus vote would not be subject to Turkish Cypriot consent. It would however reduce the need for internal coordination of policies. The Turkish Cypriot community would instead be able to act in an even more decentralised manner but would be less likely to retain ‘veto’ rights on the larger share of the vote to be cast by Cyprus in the Council.

#### **2.3.4 Coordination over EU policy-making – Belgian style**

For all EU member states the organisation of internal coordination between government departments for the purposes of negotiating in Brussels has become a major feature of government structure, involving nowadays almost every government department. Negotiations over accession have given the representatives of the Republic of Cyprus a foretaste of this. Unfortunately government in northern Cyprus has not yet any such experience. It is indeed urgent that comprehensive discussions be opened up between the Commission and officials in northern Cyprus so that the necessary familiarisation is begun for virtually all of the upper ranks of public administration.

For Cyprus, as for the existing member states with multi-tier government structures, this coordination will have the extra dimension of coordination between the national and sub-national levels of governments, and between the two sub-national governments. This should actually become a major part of the process whereby the two communities of Cyprus start getting to know each other again, and re-learn how to work together with the obligation of constant cooperation. While Cyprus will of course work out its own arrangements, it is worth noting the experience of one member state that has developed a mechanism, and indeed culture, in its public administration for doing this.

Belgium is the case in point, which is much more relevant than the other multi-tier governments in the EU. (Germany, Spain and Italy have large numbers of sub-national entities, and they do not have bi-ethnic social structures). Without wishing therefore to advocate the Belgian model at all precisely, it may be studied as an *extreme observation* of a member state that has sought a) to go as far as possible in the direction of regionalisation without undermining the sound functioning of a common

state, and b) to endow the national and sub-national governments with equality of legal status.<sup>10</sup> From the perspective of Cyprus, these two motivations of the Belgian model are highly interesting.

*Table 1. Multi-tier governance in a bi-ethnic EU member state, Belgian model*

1. EU level
2. National EU member state level
3A. Sub-national territorial entities (regions, etc.)
3B. Sub-national communities (language groups)
4. Municipalities

*Table 2. Belgian model for representation in EU Councils – Principles*

Type	Division of competences	Leader	Assisted by
I	Exclusively federal	Federal	None
II	Mainly federal, partly sub-national	Federal	Region or community
III	Mainly sub-national, partly federal	Region or community	Federal
IV	Exclusively sub-national	Region or community	None

Source: Kerremans (2000).

<sup>10</sup> A control for how different outcomes may emerge from similar structures, depending upon political behaviours, is provided in an interesting comparison by a Belgian political scientist (Jans, 2001) of the Belgian and Canadian experiences. Canada is perhaps the other most interesting comparison, involving a bi-ethnic state with long-standing inter-ethnic tensions and separatist arguments. The key conclusions from this comparison are worth an extensive quotation: ‘... both Canada and Belgium experienced a substantial share of ethno-national rivalry and a corresponding number of efforts to regulate these tensions. However, their respective records of success are entirely different. Except [in one case] all of the Belgian conflicts were transformed into mutually accepted outcomes. The list of Belgian conflicts is actually a long list of complex packaged deals and compromises. Compromises that were consistently translated into concrete policy measures and reforms. Except [for one case] none of the important Canadian ethno-nationalist conflicts resulted in a mutually accepted outcome. Those rare instances where Canadian elites seemed close to a policy outcome that satisfied both English and French Canadians, the implementation of the agreement proved to be an insurmountable stumbling block [example]. The continuous stream of compromises in Belgium led to a gradual, but very fundamental reform of the Belgian state. Thirty years of constitutional negotiations in Canada did not lead to a single reform supported by the two language groups. If anything, forty years of reform efforts seem to have brought, the prospects of Quebec’s separation from Canada closer than ever before’.



Since Article 146 of the EU Treaty permits only one person to represent Belgium in the EU Council (with the right to speak and vote), and given the large decentralisation of competences and the legal equality of the national and sub-national levels of government, elaborate rules have been developed on who should represent Belgium depending on the agenda of the Council. The decision on whether the leader of the Belgian delegation should be from the federal or sub-national government depends on which level of government has the main competence for the sector of policy of the particular formation of the Council in question. For this purpose four categories have been established, as set out in Tables 2 and 3.

*Table 3. Belgian model for representation in EU Councils - Practice*

Type	Division of competences	Sector-specific Councils	Representation
I	Exclusively federal	Foreign policy, Macroeconomic policy, Budget (of EU), Development aid Telecommunications Justice and Home Affairs	Federal
II	Mainly federal, partly sub-national	Internal market Public health Energy Transport Environment* Agriculture**	Federal minister, assisted by one (rotating) sub-national representative
III	Mainly sub-national, partly federal	Industry Research	One (rotating) sub-national representative, assisted by a federal representative
IV	Exclusively sub-national	Culture Education Tourism Land use planning Fisheries***	One (rotating) sub-national representative

\* It is being discussed whether to move environment down to Type III.

\*\* Agriculture is a special case. In the absence of a federal ministry of agriculture, a deputy minister of foreign affairs represents Belgium in the Council, supported by two assessors from Flanders and Wallonia without rotation.

\*\*\* Fisheries is also a special case. Since only Flanders has a coastline, there is no rotation with Wallonia, and Flanders therefore always represents Belgium in the EU Fisheries Council.

Source: Kerremans and Beyers (2000).

Two categories identify the exclusive competences of federal and sub-national governments, respectively, in which case only that level of government is represented. The two other categories concern shared competences. One case is where the federal government is deemed to have the main interest and expertise and the sub-national government a lesser involvement, and the other case is vice versa. Where the regions or communities are entitled to participate, only one of them will attend the Council meetings. This is determined by half-yearly rotation, coinciding with the rotation of the EU presidency.

Belgium has also an elaborate system for prior coordination between the various levels of government on the position to be adopted in the negotiations in the Council. When the European Commission issues a proposal, it is sent to the Belgian Permanent Representative to the EU, who sends it to the federal and each of the regional governments. Each of these governments defines its position and expresses it at weekly meetings of the Directorate for EU Affairs (known as the P.11 Committee) convened at and chaired by the Ministry of Foreign Affairs. These meetings determine the position to be taken by Belgium in the EU Council of Ministers, and instructions are given to whoever will represent Belgium there. There has to be unanimity on the part of the federal and regional/community governments, since there exists no legal hierarchy between the levels of government – the regional governments have equal status to the federal government.<sup>11</sup>

If agreement is not possible, the issue is referred to the foreign ministers of the federal and regional governments. If they fail to agree the issue is passed to the top level: the Concertation Committee of the Prime Minister of Belgium and the Ministers-Presidents of the sub-national entities. If there is still a failure to reach agreement, then Belgium will abstain from participating in the negotiations, and also abstain if a vote is taken.

However abstention is rare (only four times since 1994). This may be partly explained by the political culture of negotiation in Belgium and the Belgians' desire to be viewed as 'good Europeans' by other member states. But it is also because of the strong incentives not to abstain in the Council. Depending on what voting rule applies in the Council, an abstention could work against the interests of one level of government in Belgium. If the Council operates according to unanimity, an abstention would count as a positive vote. The level of government resisting a positive vote would thus have strong incentives not to abstain but to try and formulate a Belgian position taking at least partly into account its

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<sup>11</sup> This account of the Belgian system draws heavily on Keeremans (2000).

concerns. If instead the Council operates on the basis of qualified majority voting, an abstention would count as a negative vote. In this case the level of government in Belgium supporting the EU initiative would attempt to prevent a Belgian abstention.

There is also a system of sector-specific coordination committees between the several levels of government, used wherever the technicality of business is too great to be handled by the general P.11 Committee.

With the Belgian position and its representation in the Council determined, there is then a division of labour between the *leader* of the Belgian delegation and an *assessor*, both of whom come from different levels of government (and also rotate on a six-monthly basis). The assessor has the task of keeping in contact with the governments not present as negotiations proceed, thus arranging 'live coordination' by phone from the Council chamber.

Some of the extreme complexity and cost of the Belgian system would surely be inappropriate for Cyprus. There will be in any case the need to avoid costly duplication of government ministries and national and sub-national level.<sup>12</sup> When the re-unification of Cyprus becomes operational, there will be the practical question of what happens to the RoC's departments in Nicosia that were initially serving the whole of Cyprus and subsequently only the south. As and when a single common state and two constituent states take shape, a rational system of government departments will have to be worked out in Nicosia. In this connection it is worth noting another example of the Belgian system, reported in the next chapter: Belgium no longer has a federal minister of agriculture, or therefore a ministry of agriculture. As the policy competence for agriculture, apart from its EU content, was largely transferred to the regions, there remains at the federal level no more than an agriculture section in the foreign ministry.

However these coordination arrangements should not only be viewed as cost-increasing factors. The institutional system of a new Cyprus state would be designed to settle and resolve one of the most intractable contemporary conflicts, whose cost in terms of human suffering and foregone economic development has been huge.

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<sup>12</sup> Belgrade also has a problem of this kind to work out in connection with settling the status of Montenegro. At present there is a gross duplication of ministries of the Yugoslav and Serbian governments, which is not yet rationalised, pending a decision on whether Montenegro remains in the Yugoslav Federation or not.

### 2.3.5 Other EU institutions

Within the Committee of the Regions there would clearly be separate representation of the two constituent states. The Committee of the Regions (CoR) was created by the Maastricht Treaty in 1991 with a view to giving greater effect to the principle of subsidiarity within the Union. The CoR acts as an advisory body that must be consulted on all matters relevant to European regions. The areas of compulsory consultation include: economic and social cohesion, trans-European infrastructure networks, health, education, culture, employment policy, social policy, environment, transport and vocational training. The Commission, the European Parliament and the Council of Ministers must first consult the CoR over the draft legislation or action programme in the above-mentioned areas of competence. The CoR also has the right to issue its own opinions, but its recommendations are not binding. The members of the CoR are appointed every four years based on proposals from the member states. Since the Treaty of Nice, the members of the CoR must be regionally elected representatives. Cyprus is entitled to six seats in the CoR of which there would either be an equal allocation of seats between the two constituent states (3:3), or a greater number of seats for the larger southern constituent states (4:2).

The importance of the CoR should not be exaggerated given the non-binding nature of its opinions. Nonetheless, it should be noted that while in theory each EU region has the same *de jure* representation, in practice it is those regions from member states with the most decentralised structures (such as Belgium or Germany), that have acted as the motors of the institution. In fact, in September 2000, a declaration was signed by twenty constitutional regions of Europe, demanding greater legislative powers to be given to the Committee. These regions will raise this question during the Convention on the Future of Europe. The constituent states of Cyprus could thus also play a significant role in the policies of this evolving EU institution.

Cyprus would also be entitled to six seats in the Economic and Social Committee. As in the case of the CoR, seats could be divided either equally between Greek and Turkish Cypriots or according to a 2:1 ratio.

Cyprus would have one judge at the European Court of Justice, and one judge at the Court of First Instance, making it possible to rotate the senior and junior positions between representatives of the two Cyprus communities.

## 2.4 Transition and systemic evolution

The above discussion of institutional questions have so far largely followed the outline proposed in the UN's 'Set of Ideas' of 1992, adding the EU dimension. The UN proposals also contain provisions for the transition from the status quo to the new system. However, especially with the passing of another decade of total separation, there may be two quite different concepts of transition. One would indeed concern the short run, and be essentially technical. The other would be medium to long run, and really concern the process of systemic evolution, or restructuring the system in stages on the basis of the experience of gradually restoring links and re-building trust.

### 2.4.1 Transitional arrangements

The 'Set of Ideas' proposed strictly technical and short-term measures, which would be fully implemented within an 18-month period. Including now the EU dimension, this time horizon would also be highly relevant, covering the period between signature of the Treaty of Accession and actual accession (say from early 2003 through to 2004). For example the arrangements would cover the temporary continuation of present laws and regulations until they are taken over or amended in the competences of the common state or the EU. The northern constituent state would operate under the laws of the TRNC in its fields of competence so long as these laws do not contravene Cyprus' Treaty of Accession. There would be pre-accession technical assistance for catching up with the EU acquis in northern Cyprus, etc.

However the list of topics requiring transition now seems to be much longer and bigger than the 'Set of Ideas' suggested, both because of the EU aspect and the extra decade of separation. These numerous topics may be considered under three major headings:

#### A. Transition with respect to the settlement of the conflict

- Movement of people upon adjustments to the map
- Compensation payments for loss of property
- Progressive demilitarisation
- Duration and shape of peacekeeping forces
- Legal issue over the 'successor state'

#### B. Transition with respect to the terms of EU accession

- Restrictions on freedom of acquisition of property
- Technical transitional arrangements for northern Cyprus to catch up on the *acquis*

- Introduction of the euro, e.g. after two years
- Schengen visa provisions for non-resident Turks

*C. Transition with respect to the re-integration of the peoples and economy of Cyprus*

- Re-unification of civil and criminal codes of law
- Renewed harmonisation and integration of tax system
- Re-integration of the social security system
- Introduction of convergence methods in elections
- Building of new common institutions (e.g. with sufficient bi- or multi-lingual civil servants from both communities)
- Creation of bi-communal city or local government areas (e.g. for Nicosia)
- Provision for schooling for Greeks and Turks living in the 'other' constituent state
- Qualitative improvement of trust and personal links across the communities

This list is so long and substantial that it returns to the question of the strategy for systemic evolution as outlined at the beginning of this chapter, and namely the choice of the best way in the range between the 'big bang' and 'step-by-step' approaches.

As regards the 'successor state' question there are issues of political sensitivity as well as legal substance. In general the issue is how to make the new Cyprus out of the Republic of Cyprus (RoC) and the Turkish Republic of Northern Cyprus (TRNC). At the political level there is the obvious asymmetry between the two on the matter of international recognition, but also the equally obvious demand by the Turkish Cypriots to be entering into the new Cyprus as equal partners. On legal content there is the question how to handle the stock of laws and assets that might be transferred to the new Cyprus. On matters of form one idea might be that, when all matters of substance are agreed in a single text, this would be signed by the two leaders, implying equality of the two parties to the agreement; however this act would also proceed to dissolve both the RoC and the TRNC in favour of the new Cyprus. On matters of substance there would no doubt have to be a detailed process of sifting through the laws and assets of the RoC and TRNC for the purpose of transferring them or not to the successor state. Political sensitivities in the handling of this matter may turn out to be more acute than the substance. The issue should surely not be allowed to become a roadblock impeding progress on working out substantive solutions. If after thorough discussion the question of legal-political form cannot be resolved by the two parties, the UN special representative might be invited to make a proposal.

### 2.4.2 Systemic evolution

It would probably be agreed by everyone that any solution will have to be a compromise between the extreme ‘big bang’ and the ‘step-by-step’ positions. The issue would be how far the first step would have to go, or how far would there need to be agreement on permanent features of the system.

There are three considerations to be weighed in this context.

First is the need for an adequate *exit from conflict model*, given that trust and functional links and re-integration will have to be built up over a period of many years; as this develops, the suitable design of the common state can evolve. The example of South Africa’s ‘exit from Apartheid’ may be recalled, this having proceeded in several stages. There have been several other inter-community conflicts closer to Cyprus, where the EU and/or international community have been searching for solutions over the last decade (currently Serbia and Montenegro,<sup>13</sup> Georgia and Abkhazia,<sup>14</sup> and Azerbaijan and Nagorno-Karabakh<sup>15</sup>). In all these cases, international negotiations under UN, OSCE or EU auspices have been revolving around how to maximise autonomy of the entities within the constraint of avoiding outright independence or irredentist secession. While some of these negotiations are still far from finding solutions, that which is closest is the Serbia-Montenegro case. While this is the easiest in the sense that there has not been outright conflict, it is also significant that this is the only one in which the goal of EU accession (in the long-run) is part of the political equation. Bringing the EU level of policy competence into the equation may allow the *minimal initial level of viable ‘common state’ competence* to be less than in the absence of the EU factor. This argument is of course much stronger and more immediate for Cyprus than for Serbia and Montenegro.<sup>16</sup>

Secondly, the EU itself is proceeding to its *finalité* step by step, with institutional reforms taking place with successive treaty amendments over decades. Various theoretical models (federal and other) have been discussed as ideas for the future, but it took decades of integration and

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<sup>13</sup> Whyte (2001).

<sup>14</sup> Coppieters (2000).

<sup>15</sup> Emerson et al. (2000).

<sup>16</sup> An outline agreement over a new Union of Serbia and Montenegro was reached in March 2002 with the mediation of Javier Solana, which if ratified and worked out in detail would be an example of a thin and decentralised Union structure, fashioned with a view to EU integration. The text is available in the March 2002 number of the CEPS *South-East Europe Monitor* ([www.ceps.be](http://www.ceps.be)).

confidence-building before the EU could even begin to discuss seriously questions of its *finalité* or a constitution. Even now, with the Convention that has just started, the end of the EU's 'transition' from a long period of institutional evolution to an act of constitution is not yet in sight.

Thirdly, there is again the case of Belgium, which has transformed itself from a centralised state to a highly decentralised federation with four constitutional reforms over 25 years. Even today this process may not have ended. Taking the EU and Belgium together, the model is not of 'adoption' of a new constitution, but one of continuous constitutional evolution. Political leaders are finding not only that they cannot anticipate the definitive system in the manner of the founding fathers of the US constitution; in addition they are leaving open the question whether there will ever be such a thing as a definitive constitution. The British example of not formally fixing the constitution at all may be considered extreme to the point of idiosyncrasy, but in a way the same point is being made.

How might such considerations relate in practice to the case of Cyprus? One idea could be to note again a feature of the Belgian model, and in particular its coordination structure for determining its position on matters of EU policy (as describe in the preceding section). One may have in mind the striking example of the domain of agricultural policy, which has a large EU competence, but for which Belgium has entirely regionalised its sub-EU competence, abolishing its federal ministry of agriculture and the post of minister of agriculture. The function of the Belgian 'common state' consists here of coordination of the policy preferences of the two communities, with the aid of a small secretariat for agriculture in the ministry of foreign affairs. As a more general system one could think of a wider application of this method to a set of policy domains, which could get the new Cyprus started for a transitional period. The effective deadline for an agreement in the autumn/winter of 2002 (in order for an Accession Treaty to be signed with the reunified island) supports the view that a first step would entail a thinly institutionalised centre with limited policy competences.

On the other hand, while as a theoretical model one can extrapolate the coordination system to the point of being the essence of the system, there would in practice remain the vital question of the minimum content of 'common state' competences and institutions (executive, legislature and judiciary) that would be necessary for a viable system: the sufficient glue to hold the system together. A first-step constitutional structure should be strong enough to prevent the dissolution of the system. However, as pointed out above, the workings of the EU would itself be part of the glue.



In addition to a first constitutional structure, a first-step agreement would also need to settle the other issues of the conflict (territory, refugees and security). A step-by-step approach should not be an attempt to postpone the resolution of conflictual questions, running the risk that a settlement might collapse after accession to the EU. It would only be the precise arrangements of the constitution which could evolve over time. Greater institutionalisation of the centre and a shift of competences from the constituent to the common state level may be determined over time with the consent of the two communities.

Whether this transition period would run for a short or long length of time would be another important question. This could be decided in the light of experience. It would also take into account the real evolution of economic re-integration and the gradual rebuilding of trust between the two communities.

In the event of considerable reliance on a coordination structure to get started, there would also be the question of the extent of commitment to a next step in the process of institutional evolution. At a minimum, there would need to be agreement to revisit the institutional questions after a certain number of years. The maximum would entail pre-commitment to the nature of the next step. An intermediary position would be to agree to a *rendez-vous clause* for revisiting the issues after N years, but with the proviso that it would consider options for integrating the system further and explicitly ruling out secession.

In conclusion, it is evident that there would be many domains subject to substantial transitional processes. At some point, however, the nature of the strategy changes. In one model the parties decide basically on a *definitive system*, and then work out how to get from here to there. In a second model the parties decide to get started with something practical and not too ambitious, knowing that the subsequent *process of continuing institutional evolution* would be of the essence. Embarking on 'a common journey to an unknown destination' may sound risky, but that is actually what the EU itself is doing.

## CHAPTER 3 KOMPETENZ KATALOG

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This German expression, whose meaning will be self-evident, is used because it becomes the effective name of part of the current EU Convention process. The questions posed in the terms of reference for the Convention include:

Can we make a clear distinction between three types of competence: the exclusive competence of the Union, the competence of the member States, and the shared competence of the Union and the Member States? At what level is competence exercised in the most efficient way? How is the principle of subsidiarity applied here?

Of high relevance to Cyprus, these questions over competences have been most forcefully raised by member states with multi-tier governmental structures (for example Germany) under pressure from their sub-national entities wishing to prevent an erosion of their own competences. At a time when Cyprus will be working out its new distribution of competences in a re-unified setting, the EU will itself be addressing the same questions.

Moreover, as the previous section has pointed out, where the EU shares competences with its member states it is often doing so not just with central governments, but also with sub-national entities. By contrast one can sometimes hear in the Cyprus debate remarks like ‘all domains of EU policy will evidently be competences of the central government’. This does not correspond to current realities in EU member states with multi-tier governments, nor is it a sound prescription for the future. The future *Kompetenz Katalog* for the re-unified Cyprus as member state of EU will need therefore to be worked out in considerable detail. Options will remain open on many points for the two communities of Cyprus to work out between themselves, but these choices will nonetheless be considerably constrained in the EU setting. In this chapter an attempt is made to sketch both the options and the constraints.

### 3.1 Monetary policy

Cyprus may be expected to join the eurozone two years after accession to the EU. The Central Bank of Cyprus would become part of the European System of Central Banks. Its governor would become a member of the Governing Council of the European Central Bank. Monetary policy at the macroeconomic level – control of interest rates and money supply – is set

in its fundamental aspects identically for the whole of the euro area ‘in Frankfurt’.

While monetary policy remains a national competence within all EU member states, there is an array of federal central bank structures that may be adopted within a member state. The US Federal Reserve System is usually thought of as a model to be compared with the eurozone as a whole. However Germany has so far retained the federal structure of the Bundesbank as a second tier now within the federalist euro system. The reforms of the internal structure of the Bundesbank discussed currently in Germany will surely rationalise and adapt the Bundesbank system, but nobody doubts that its federal structure will remain. For Cyprus one could thus consider schemes for regional representation in a governing council of the Central Bank of Cyprus. The only condition *sine qua non* would be that the governor cannot take any instructions while sitting on the Governing Council of the European Central Bank, and must be able to speak freely for his central bank.

In Germany the *Landeszentralbanken* (the regional offices of the Bundesbank) have always had a role in the implementation of banking supervision for smaller, regional banks, because of their in-depth knowledge of the business of these institutions. While the rules for banking supervision are set at the EU (and often global) level, the basic principle remains that of host country supervision. Involving regional institutions in the supervision of banks that operate predominantly at the regional level makes sense, provided of course that the highest standards of professional quality of banking supervision can be maintained. This requires an extremely high degree of integrity of the regional institutions, whose first instinct might often be to cover up mistakes of regional banking or savings institutions.

Within the EU, however, there has been a wide range of practice for the supervisory and regulatory functions, ranging from the independent regulator, to the ministry of finance, to the central bank.<sup>17</sup> The advent of the euro has had the result of inducing some convergence on the central bank model. This is because the national central banks no longer have the ‘moral hazard’ problem of combining both monetary and regulatory policy responsibilities under the same roof. Also the national central banks of the euro area now find themselves with spare staff resources.

It may be discussed whether it would be economically optimal for the euro to be introduced at the same time in the whole of Cyprus, given the lower level of economic development in northern Cyprus. An alternative

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<sup>17</sup> See Bini Smaghi and Gros (2000).

scenario might be for northern Cyprus to retain for some years a separate weaker currency, notably the Turkish lira as at present. The experience of East Germany's immediate integration into the DM area upon re-unification may be borne in mind. Many economists have argued that the key mistake Germany made was that of instantly equalising wage levels between West and East Germany.<sup>18</sup> This occurred under the pressure of fears of a massive exodus from east to west, which might have seriously disrupted the German labour market. In the case of Cyprus, however, a large flow of migration of the kind feared in Germany is highly unlikely because of inter-community tensions, which will take time to abate. For these reasons a replica of the German re-unification experience may be considered both avoidable as well as undesirable.

In shaping a suitable policy for re-unifying Cyprus, the main point would be for wage-fixing in the private sector to remain decentralised as between the north and south. There will of course be a progressive convergence of wage levels, fastest no doubt in the capital city and especially so in the public sector of the common state. However wage convergence should not be prematurely accelerated as a matter of policy at the common state level. This would ensure the greatest chance of triggering real economic growth and a catch-up process in northern Cyprus, rather than installing a permanently high unemployment level in the poorer part of the island. Under these conditions the simultaneous introduction of the euro in the whole of the island should assist the northern Cyprus economy to catch up, helping it move towards a more equal economic level, especially when combined with other equalising factors to be discussed further below (social security and EU structural funds). Above all the use of the euro in the whole of Cyprus will be an extremely strong credibility factor for persuading investors to regard northern Cyprus as a plausible investment location, and no longer 'another world'.

### **3.2 Internal market and the four freedoms**

Here there is a mass of EU legislation which the Republic of Cyprus has already adopted to a large degree in the course of its accession negotiations. In multi-tier member states there tends to be a sharing of competence, with the national level responsible for the transposition of EU laws into national laws that set norms and rules, whereas the sub-national level may be responsible for at least some of the implementation. Belgium, for example, has categorised the internal market as a mainly federal but partly regional competence.

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<sup>18</sup> See Gros and Steinherr (1995).

If the whole of Cyprus accedes to the EU in 2004, northern Cyprus would need special transitional arrangements of two types, as follows.

*Technical transition.* The first type would concern purely technical questions over the speed with which northern Cyprus could reasonably be expected to catch up with implementation of the huge mass of existing EU laws for the internal market, the so-called *acquis communautaire* of 60,000 pages of legal texts. The EU would surely expect the most rapid possible progress, but it would be politically unreasonable either to hold up the accession of Cyprus to the EU, or the re-unification of the island pending completion of this task. One might say that the political solution to the Cyprus problem should not be held hostage to the need to harmonise standards for the packaging of tomatoes. The EU would retain more than adequate incentives and sanctions to ensure that northern Cyprus would take its obligations seriously. For example the structural funds will be making large investments in the economic infrastructure of northern Cyprus. In any case, as soon as the basics of a political settlement are in sight, the EU will surely open up massive programmes of technical assistance to hasten the catch-up.

*Political transition and derogations.* A second category of possible arrangements would relate to the political conditions for re-unification of the island. Of the four freedoms, special attention would need to be paid to the freedom to reside, settle, and acquire property. It should be noted however that the rights deriving from the EU *acquis* are distinct from the human rights affecting displaced persons in Cyprus, whose status would probably need to be settled in the context of an initial settlement. As far as the EU *acquis* is concerned, as in the case of other accession candidate states there is acute sensitivity over the risks that a sudden liberalisation, alongside big differences in wealth between communities living in close proximity (e.g. around the German-Polish frontier) might lead to the richer community 'buying up' the less rich. The other two freedoms, for the movement of goods and services, would probably not see any transitional restrictions between the two constituent states.

As regards possible restrictions on the freedom of residence, settlement and acquisition of property, there is an important distinction made in EU law between a) internal movements and transactions within member states and b) relations between member states. If the two communities in Cyprus were to agree to temporary or even permanent restrictions on the freedom of Greek Cypriots to settle and acquire property in northern Cyprus, and vice versa for Turkish Cypriots in southern Cyprus, this would not entail a derogation from the EU law. Such a restriction would be considered an internal state matter and would only be a matter for the

laws and constitution of Cyprus, which would not concern the Treaty of Accession with the EU. Restrictions of this type apply within certain EU member states such as Austria, where there are inter-regional restrictions for the acquisition of property.<sup>19</sup>

The freedoms of settlement and acquisition property for other EU nationals in Cyprus would, however, fall under the jurisdiction of EU law. Some of the concerns in Cyprus would have features in common with concerns in several current candidate countries regarding the acquisition of property by 'richer' EU member states following an immediate liberalisation of the freedoms. In the current enlargement negotiations, the European Commission has distinguished between three types of property: *agriculture land*, *second homes and investment*. It has proposed seven-year transitions for agricultural land, five years for the acquisition of second homes and none for other investment, given the need of foreign direct investment in most of the candidate states. Poland, however, concerned about the possibility of large-scale German acquisition of agricultural land, requested initially a 14-year transition period, which it recently reduced to 12 years. The freedom of movement of labour and of residence rights was subject to 10-15 year transition periods in the cases of the Greek, Portuguese and Spanish accessions<sup>20</sup>.

Permanent derogations from the *acquis communautaire* are viewed by the EU much more unfavourably than temporary transitional arrangements, and in general are excluded on principle. However some permanent derogations to the full application of the four freedoms have been accepted within the EU in the past in exceptional cases that were 'justified by history'. In Finland the Aaland Islands represent an autonomous entity of Swedish-speaking Finnish citizens, approximately 25,000 in number. The right to 'official domicile' on the islands is controlled by the Aaland Islands authorities and is restricted to Swedish-speaking people. Of course all Finnish and EU citizens have freedom of movement in and out of the islands. Without official domicile, however, the individual cannot participate in elections, stand for local office, own property or exercise a trade or a profession without a licence of the Aaland authorities. These special arrangements existed prior to Finland's

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<sup>19</sup> The judgement of the European Court of Justice about Austrian legislation restricting acquisition of property is Case C-302/97 of 1 June 1999, Klaus Konle v Republic of Austria.

<sup>20</sup> Options for handling the termination of temporary restrictions could be of two types: a) the restrictions end unless both communities agree to extend them, and b) the restrictions are prolonged until and unless both communities agree to end them.

EU membership and were retained upon Finnish accession to the EU through a Protocol annexed to the Treaty of Accession. In Denmark there are still permanent restrictions on the acquisition of second homes by German citizens, more than a century after the settlement of the Schleswig-Holstein dispute. In the current round of enlargement negotiations, Malta succeeded in securing permanent restrictions on the purchase of property by foreigners. Following EU membership only foreigners who have been residing in Malta for more than five years will be able to freely acquire property in the island. In order to guarantee the permanent nature of these arrangements, a Protocol will be annexed to Malta's Accession Treaty, which can only be altered with Malta's consent.

The menu of conceivable possibilities seems thus to range from Polish-style transition periods to Finnish/Danish/Maltese-style permanent derogations. The European Commission has recently indicated that 'the EU, with its *acquis*, will never be an obstacle to finding a solution to the Cyprus problem'. This statement was contained in President Prodi's speech before the House of Representatives of the Republic of Cyprus in Nicosia in November 2000,<sup>21</sup> and in the 2001 Commission Progress Report on the candidature of Cyprus.

An alternative approach would be to extend some of the internal market freedoms in Cyprus to Turkey. Achieving a balance between the Greek and Turkish communities, which would be the rationale of Turkish Cypriot demands for 'negative derogations' vis-à-vis Greek interests, might be obtained instead by 'positive derogations' in favour of Turkish interests. The attraction of this alternative 'positive' approach lies in the fact that permanent negative derogations against Greek interests in northern Cyprus would not only be against the general principles of European integration, but could also prove practically unworkable. If negative derogations were only to apply to Greek interests, the restrictions on these transactions might be legally circumvented by the acquisition of property in Cyprus by other EU citizens or companies on behalf of Greek interests. If, on the other hand, negative derogations were to restrict investments in northern Cyprus from all EU member states, this would seriously slow down the economic development of the region.

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<sup>21</sup> Mr. Prodi continued: 'The EU never seeks to determine the constitutional arrangements or the security arrangements of its member states. Such matters are up to them. I am confident that the EU can accommodate whatever arrangements the parties themselves agree to in the context of a political settlement. As an EU Member State Cyprus will of course have to participate in the Council of Ministers with one voice' (*Cyprus Weekly*, 30 October 2001).

Alternative ‘positive’ measures would most easily apply to the movement of capital and acquisition of property. Turkish interests already have *de facto* complete access to northern Cyprus. However with the present regime of economic sanctions by the EU and the international community against northern Cyprus, the region is unattractive for large-scale inward investment. With re-unification of the island and its accession to the EU, this would change dramatically for the better, and inward Turkish investment might become an important factor for economic growth. It should however be noted that with the forthcoming extension of the Turkey-EU customs union to services and public procurement, several investment rights would automatically be given to Turkey in Cyprus (as an EU member state).

The concept of ‘positive derogations’ would also have the considerable advantage of ensuring increased integration between Turkey and a new member of the Union. Positive derogations would not only allow Turkey to benefit from the same opportunities available to Greece and other EU member states in Cyprus. They would also allow Cyprus to act as another step in Turkey’s own EU membership drive.

### **3.3 External trade policy**

Like for monetary policy, trade policy sees a major exclusive competence at the EU level that would be a concern of the common state. The customs service would presumably be a national competence. However there could be a coordination mechanism between the national and sub-national levels (possibly Belgian-style), in order to determine the position of Cyprus in negotiations in the EU Council on trade policy.

Since Turkey is already in a customs union with the EU, and northern Cyprus is *de facto* in a customs union with Turkey, the entry of the whole of Cyprus into the EU will on this trade policy front be another positive element in the deepening of EU-Turkish relations. The EU-Turkey customs union is in the process of being extended to services and public procurement as well.

The joint membership of Cyprus, Greece and Turkey in a customs union (as part of the Turkey-EU customs union) would eliminate the initial concern voiced by Turkey and the Turkish Cypriots, that EU membership by Cyprus before Turkey would violate Article 189 of the Constitution of the Republic of Cyprus, which accorded most-favoured-nation treatment (MFN) to both Greece and Turkey. The Turkey-EU customs union was established in 1996, well after the 1992 ‘Set of Ideas’, which also reiterated the MFN clause of the 1960 constitution.



### 3.4 Budgetary policy

Membership of the eurozone requires, according to the Growth and Stability Pact, that the general budget balance (of the consolidated national and sub-national budgets) should respect certain norms, which generally aim to keep the budget deficit to a level below 3% of GDP. This is a further example of a mainly national level competence, requiring however a coordination mechanism with the sub-national budgets. The EU holds the national authorities responsible for seeing that the internal coordination arrangements are adequate.

For example Germany has arranged a coordination process with the 17 Länder, which amounts to an internal German Stability Pact.

Belgium also has a system of coordination, which works through the *Conseil superieur des finances*, and may correspond more closely to future need of Cyprus. The *Conseil* consists of the finance ministers (or responsible officials) of the federal, community, regional and local levels of government. Each year the *Conseil* draws up an annual report, that allocates budget balance norms to all levels of government and individual regions and communities. In total these have to respect the norms of the EU Growth and Stability Pact. Recently the tendency has been to prescribe a convergence of budget balances for all entities on a zero nominal norm, which may be suitable for an economy seeking to reduce an excessively high public debt level. The annual report, with the norms it prescribes, is adopted by consensus. The federal minister of finance has no authority over the sub-national levels of government.

The most effective constraint on the budgets of the constituent states would be the need to finance any deficits by borrowing in euro with no possibility for monetary accommodation from the central bank. This would contrast with the situation today in northern Cyprus where there seems to be no hard budget constraint, deficits being virtually automatically funded by Ankara.

### 3.5 The tax system and revenue equalisation

World-wide experience of taxation systems for multi-tier government structures suggests three broad models to choose from:

- *Model 1* consists of a unified set of main taxes (personal and corporate income taxes, value-added tax, social security contributions, and excise) but with apportionment of the revenues between the national and sub-national budgets.

- *Model 2* consists of common tax bases, a level of national tax rate, supplemented by further sub-national rates (the latter might differ).
- *Model 3* sees higher degrees of decentralisation, with certain taxes being exclusively levied by sub-national entities. In small territories with freedom of movement of persons and capital, however, tax rates cannot differ by wide margins without encountering serious difficulties in implementation.

In all cases property taxes tend to be left to the sub-national or municipal level, together with other miscellaneous minor taxes that attach to immobile factors.

The EU's main requirements are a) harmonisation of the value-added tax base and ceding a small fraction of these revenues to the EU budget, and b) the ceding of all customs duties to the EU level.

Belgium, for example, collects all the main taxes federally, but this is largely explained by the fact that Belgium comes from a formerly centralised state system. The federal level retains 100% of corporate tax revenues. For personal income tax and value-added taxes, about 40% of total revenues are returned to the regions or communities, apportioned in accordance with the residence of the tax-payers.

For Cyprus there are strong reasons to make the value-added tax and customs duties the first source of common state revenues. Apart from the need for EU harmonisation and cession of revenues to the EU, the small size of the island of Cyprus makes a unified value-added tax system highly desirable: otherwise there would be shopping across communal borders just for fiscal reasons, indeed just a walk across a street in Nicosia. This would still leave open the possibility to return a share of value-added tax revenues to the constituent states.

Corporation tax would be another strong candidate for a unified system, partly for EU requirements (e.g. constraining off-shore regimes); but here also differences would soon prove self-defeating, as companies would readily gravitate to the constituent state offering the most lenient tax regime.

On the other hand, some differentiation of personal income tax regimes might be sustainable, for so long as labour and residential mobility remained limited across the communal borders.

Depending upon the choice of tax system, there would be the question of the degree and mechanism of *revenue equalisation* between the sub-national budgets, especially given the highly unequal initial levels of economic development between northern and southern Cyprus. It would

be conventional to arrange for the fiscal capacity of the two constituent states to be equalised through inter-governmental transfers to a specified degree (the percentage would be a negotiation variable). The technical form of the equalisation formula would differ according to the model of taxation chosen: a thorough comparison of existing systems is available in study of the European Commission.<sup>22</sup> If the tax system levied taxes mainly at the national level, then the system could apportion the transfer of revenues to the sub-national budgets calculated to equalise revenue per capita to a given degree (70, 80 or 90%, etc.). This would be a 'vertical' transfer system, from national to sub-national budgets. However 'horizontal' methods also exist, notably in the case of Germany (*Horizontalfinanzgleich*) where the Länder cooperate in making equalisation calculations, and execute the resulting transfers directly between themselves.

While the precise mechanisms of inter-regional redistribution of public finance are many and varied, there is one general finding that emerges from the comparison of systems common to both centralised and decentralised states (of the EU and the advanced federations elsewhere). Whatever the mechanism for inter-regional transfers, the outcome in terms of degree of equalisation of inter-regional living standards is rather similar. The evidence analysed in the study undertaken for the EU<sup>23</sup> has shown that the poorest regions of an advanced economy will tend to receive transfers offsetting about 40% of the per capita income differentials. Such a prospect would of course be of great importance for today's northern Cyprus, where living standards are only one-third of the level achieved in southern Cyprus. Transfers of this order of magnitude also mean automatic (and invisible) financing for large current account balance-of-payments imbalances between the regions of integrated economies. The same study observed balance-of-payments deficits in poor peripheral regions of advanced economies of amounts of up to 30% of the GDP of the beneficiary regions. Interestingly, amounts approaching this order of magnitude are seen today in the transfers from Turkey to northern Cyprus.

The pertinence of working out a systematic scheme for fiscal distribution is emphasised by the prospect of a total restructuring of the finances of northern Cyprus, assuming that Turkish government subsidies to northern Cyprus may be rapidly reduced if not eliminated, given Turkey's own grave financial crisis. Alongside this there would be the introduction of EU grants and loans (see further below). A significant redistribution system

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<sup>22</sup> See Macdougall (1977).

<sup>23</sup> Op cit.

would naturally go together with a substantial content to the competences of the common state.

### **3.6 Social security finance**

At some stage Cyprus would move back to an integrated social security system, since otherwise there would be insufficient incentive for people to migrate over short distances in order to profit from differences (starting with Nicosia). To minimise distortions to the economy it would be best initially for monetary social security benefits to have a significant earnings-related component, rather than flat-rate money amounts. Similarly social security contributions should be earnings-related. Even in these circumstances, however, an integrated social security system would be likely to produce automatically a degree of financial equalisation between south and north.

Implementation of benefit systems would be undertaken by agencies managed by the sub-national authorities. Such agencies could have visible community identities (e.g. staffing, language of service, names of agencies, etc.), even if the overall financing was effectively underwritten at the national level.

### **3.7 Regional development**

This would be a major responsibility of the constituent states. However financial contributions would be available with grants from the structural funds of the EU budget and loans from the European Investment Bank, especially for the poorer northern Cyprus. The general financial framework for EU contributions has to be negotiated in the EU institutions, and certainly would require a coordination mechanism between the national and sub-national levels of government. This could be a domain for a political choice in the case of Cyprus between Types II or III in the Belgian method of coordination for EU Council meetings (i.e. either the federal minister supported by one rotating sub-national representative or the other way round).

The rules and criteria of the existing structural funds of the EU would see the whole of northern Cyprus recognised as 'Objective 1 Priority Region', whereas southern Cyprus would not qualify because of its high GDP per capita and low unemployment levels. As regards the scale of assistance that would be provided to northern Cyprus, the European Commission published precise figures on 30 January 2002.<sup>24</sup> Before reporting these, it

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<sup>24</sup> European Commission, 'Commission offers a fair and solid approach for financing EU enlargement', Press release 30/01/02.

is worth setting out some of the parameters within which EU policies are set.

As a maximum, the EU has adopted the guideline that aid to newly acceding states should not exceed 4% of the GDP of the new member state as a whole, which in the case of Cyprus would amount to about €400 million. If as a mechanical calculation it was supposed that 4/5 of this order of magnitude was granted to northern Cyprus as an 'Objective 1 Priority Region', the amount would be about €320 per year, which is equivalent to about 31% of the actual GDP of northern Cyprus.<sup>25</sup> In addition the European Investment Bank might normally contribute about half as much again in loans, making a rough total of €500 million per year, or 50% of GDP. These amounts are much higher than might be actually expected in view of the likely problems of absorptive capacity. On the other hand, investment ratios of up to 30% of GDP have been recorded in very fast growing economies, especially in reconstruction and 'catch-up' contexts.

At a minimum, one may look at what the EU has been doing in its ultra-peripheral islands, such as the Canary Islands and Madeira, which are somewhat comparable to Cyprus in size, climate, peripherality and in the importance of the tourism sector. These regions of Spain and Portugal, while being viewed with favour as recipients of EU Structural Funds because of their peripherality, have however been in tough competition with large areas of the mainland Spain and Portugal for Structural Funds. Taking nonetheless the examples of the Canary Islands and Madeira, in these cases about €3 billion of grants were made in the six-year period 1994-99, or €500 million per year, but for a total population of 3.5 million. Scaled back on a per capita basis (200,000 population instead of 3.5 million) northern Cyprus would receive only €30 million of grants per year.

Within this wide range of €30 to €320 million per year for Structural Fund grants, it may be argued that northern Cyprus could get a result closer to the higher than lower end because of two arguments. First there is the absence of competition from other parts of Cyprus for intensive aid.

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<sup>25</sup> Rough arithmetic, based on data in Annex A: northern Cyprus, population of 209,000 x \$4,978 per capita = \$1,040 million; southern Cyprus, population of 669,000 x \$13,272 per capita = \$8,879 million. Total Cyprus GDP = \$8,879 + 1,040 = \$9,919 million; x 4% = \$396.76 million = €400 million. Note: these figures are subject to revision, given the uncertainty of economic data for northern Cyprus. Also the official EU calculations make use of purchasing power parity data, not used here, which might change the results somewhat.

Secondly, there will be special costs of the post-conflict settlement, both for rehabilitation and compensation for property rights, and a political case for a conflict-resolution bonus. On the other hand, Cyprus as a whole has easily the highest GDP per capita of the accession candidate states, and the level of southern Cyprus even exceeds that of Portugal and Greece. Overall there should be for the small economy of northern Cyprus an investment boom, sufficient to transform the economic landscape within a decade. Such has already been the experience of regions of Portugal, for example. The chances of a fast catch-up with southern Cyprus could be very favourable, as long as the end to the conflict was truly credible. This also assumes that the resources would be efficiently used, rather than basically funding the northern Cyprus budget deficit as today with Turkish aid (see Annex A).

The European Commission published on 30 January 2002, first indications of the likely scale of financial assistance to Cyprus. The total amounts foreseen in commitments for the northern part of Cyprus through Structural Funds and pre-accession aid (which northern Cyprus did not benefit from during the RoC's accession process) are €39 million in 2004, €67 million in 2005 and €100 million in 2006. Most of these funds would, for northern Cyprus, be spent on investment in renewal of economic infrastructures and re-training programmes. A special need will be for renewing transport and communications infrastructures between north and south across the 'green line', and rehabilitating the ghost town of Varosha. Following the experience of Portugal, the EU could also make grants for investment in institutions of higher education and public health (universities, technical colleges, hospitals, etc.). Loan finance for investment in the private sector, as well as public infrastructure, will additionally be available from the European Investment Bank (EIB), for example for rehabilitation and modernisation of the tourist economy. The amounts of EIB funding cannot be decided in advance, and would depend on sound projects being forthcoming. However past experience would suggest that the EIB contribution could add the grants from the structural funds by something in the range of 50-100%.

Going in the other direction, budget support for northern Cyprus from Turkey would presumably be cut in the event of re-unification and EU accession. In January 2001, Turkey and the TRNC signed a financial protocol foreseeing economic (budgetary) support from Turkey totalling \$350 million for the following three years. This figure represented a drop in aid from previous years, considering that transfers in 2000 alone exceeded \$200 million.

### 3.8 Summary of budget financing issues

From the foregoing section, one can anticipate a complex set of interdependent financial issues to be resolved as and when the negotiations over re-unification and EU accession approach the point of a visible outcome. These essentially concern the funding of the public finances and rehabilitation of northern Cyprus.

A first assembly of the main components of the equation can be set out, with a preliminary assignment of plausible responsibilities, as follows:

- Turkey already requests northern Cyprus to cut its budget deficit. While Turkish grants and loans to northern Cyprus are currently very large for the recipient (23% of GDP and over 40% of budget resources – see Annex A), they are still a small amount for Turkey – as long the transfers are made in Turkish lire. However it would only be a matter of time before this last condition would cease to be met (the scenario above called for Cyprus to accede to the euro area perhaps in 2006).
- The tax collection performance of northern Cyprus is currently notoriously weak, given a large grey economy, and would need to be seriously improved, but this will take a few years.
- The level of expenditure on employment and social transfers in the public sector of northern Cyprus has become disproportionately large during the last decades, and will surely need to be reduced drastically, as the economy is restructured and set on a new growth path. However this also will take a number of years.
- A first contribution from the common state level might come automatically through centralised funding of the operating balances of the social security agencies, if some such solidarity mechanism were desired.
- The EU budget would normally contribute grants only for ‘structural purposes’, including public infrastructure, education and re-training, some public health investments, and technical assistance for catch-up in relation to the accession.
- The EIB can contribute loan finance but only for public infrastructure and private investment.
- Some of the costs of property compensation funds might be met by bilateral donors (see below on refugees).

- Overall, it seems quite likely that the above elements will leave still a significant margin of shortfall of budgetary resources for northern Cyprus, especially in the first years. Exactly when would depend on the nature of the budgetary regime of the common state, and on the timing of Cyprus' accession to the eurozone.

Options for meeting this shortfall would seem to be two. The first would be budgetary transfers from the common state budget through some kind of fiscal capacity equalisation mechanism of the kind commonly observed in multi-tier government structures. But this would depend on the nature of the common state. The second option might be a transitional budget grant from the EU to northern Cyprus. In general the EU does not make grants of this type, and they are conspicuous for their absence from the Commission's recent proposals for the structural funds. But there have been some exceptional cases, notably in the context of conflicts and their resolution (see the Balkan examples of Bosnia, Kosovo and Montenegro in recent years).

### **3.9 Energy, transport and environment**

These are further major domains that may see a complex sharing of competences in the multi-tier EU setting. All are the subject of important EU legislation, with the transport and energy domains forming part of the single market. Regulatory policies for the liberalisation of competition in such areas as civil aviation and energy production and distribution are latecomers to the EU single market policies, but are nonetheless the subject of much fundamental legislation currently. Similarly the environment field, while not regarded as a single market policy, is also the subject of much norm-setting and negotiation over the EU's international environmental commitments (such as global warming and emissions trading).

The Belgian experience may be used as an illustration of how competences may be divided in some detail. In the *energy* field the regions in Belgium are empowered to regulate 'regional aspects of energy policy', whereas the federal authorities handle issues which for economic or technical reasons cannot be divided and require equal treatment at national level. More precisely this means the following division of labour:

#### *Regional competences*

- Electricity distribution through networks of up to 70,000 kV
- Public gas distribution
- District heating networks



- New and renewable energy sources (e.g. wind power)
- Recovery of waste energy
- Rational use of energy

*Federal competences*

- Equipment of the electricity sector
- Large infrastructures for energy storage, transport and production
- Nuclear fuel cycle
- Tariff policies

Similarly in the field of *transport*, responsibilities in Belgium are split according to a similar rationale, with maximum regional decentralisation where feasible. Buses, ports and waterways are regional responsibilities, but railways and civil aviation and air traffic control is federal. For vehicle safety the norms are set at federal level, but their implementation is executed at regional level. Roads are regional, except that the main highways are managed in cooperation with the federal authorities.

The main responsibility for *environmental policy* in Belgium has also been entrusted to the regions as a result of constitutional reforms in the last 20 years. The formal division of competences works as follows:

*Regional competences*

- Protection of the soil, water, air and noise environment
- Waste management and sewage
- Control of dangerous industries
- Land conservation and nature, hunting and fishing

*Federal competences*

- Product rules and environmental taxes
- Nuclear waste
- Transit of waste materials

Belgian law also makes consultation procedures mandatory between the levels of government where the environmental issues raise matters of trans-boundary concern. The federal competences are largely concentrated in areas where EU legislation dominates. Residual competences not explicitly attributed to date belong to the regional level.

Almost every aspect of the federal prerogatives is subject to regional involvement through consultation procedures. In fact there are no less than 25 expert groups that bring together federal and regional officials within the framework of the Coordination Committee for Environment Policy. Leadership of these groups is attributed to federal or regional

officials, depending on who is judged to be the most interested and competent actor.

In general there are some important lessons from the Belgian experience – thorough analyses for the environment and energy sectors are available.<sup>26</sup> There is a maximum effort to attribute *exclusive* competences to federal or regional levels. This may be considered a healthy principle in general for the purposes of clarity of governmental responsibilities. However the Belgian experience suggests that the definition of such competences has to be made at a more disaggregated level than the sectoral policy headings of conventional government departments. It is found that ‘environmental’, ‘energy’ and ‘transport’ policy are all too large and heterogeneous blocks of policy to be attributed to one level of government in a multi-tier EU setting.

### 3.10 Agriculture

This is another sector with very strong EU powers, but where practical implementation may be devolved to the sub-national level. This is what Belgium has done, and since 2001 agriculture has been transferred, according to the schema in Table 3, from Type II to Type III. Agriculture is considered now a mainly regional competence, with some federal interests. There is no longer a Belgian ministry of agriculture, or federal minister, just an agriculture section in the foreign ministry. In the absence of a federal ministry of agriculture, agriculture is the only area in which a deputy minister of foreign affairs represents Belgium in the Council of Ministers, supported by two assessors from Flanders and Wallonia without rotation. There will still have to be a Belgian agricultural intervention agency to execute the European Commission’s instructions (to buy or sell intervention stocks), but its location is not yet decided.

### 3.11 Culture and education

Greek and Turkish would obviously both be the official languages of a re-unified Cyprus, as was the case under the 1960 constitution in any case and remains theoretically so for the present Republic of Cyprus. This means that the acts of the common state would all be bi-lingual, as is the case in other bi-lingual or multi-lingual states, such Belgium, Canada and Switzerland. Furthermore, to begin with, Turkish would probably be the official language in northern Cyprus and Greek in southern Cyprus, as Flemish is in Flanders and French in Wallonia. For Nicosia and possibly Famagusta, there might be a bilingual regime at some stage like the great

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<sup>26</sup> See Jans and Tombeur (1999).

'agglomeration' of Brussels. If and when the two communities begin to overlap, particularly in the border areas between the two regions, some mixed arrangements could be considered (see below on the different options)

However accession of a re-unified Cyprus to the EU would have itself a further extremely important external effect: the Turkish language would become one of the official languages of the European Union. This in turn means that all the acts of the EU would appear in Turkish, which will facilitate the rapprochement and integration of Turkey itself with the EU. This will work both in practical ways (accessibility of EU texts for Turkish business people, politicians, civil society, media, etc.), as well at the level of sentiment and perceptions of all Turkish-speaking peoples.

The policy domains of culture and education would be exclusive competences of the constituent states, or language communities. Where the territory and the language community completely coincide, as is presently the case in Cyprus, the organisation of education policy can be relatively straightforward. Schooling and higher education would also be an exclusive competence of the constituent states, subject only to the setting of norms at the national level in order to assure comparability and mutual recognition of educational standards, where there is also an important EU role in mutual recognition too. Teaching of Greek as a second language in the schools of northern Cyprus would be assured, just as the teaching of Turkish as a second language would be in southern Cyprus.

However if and when patterns of ethno-demographic residence change, and the cultural communities overlap geographically, the task becomes more complicated. In the case of Cyprus, as openness is restored and inter-ethnic trust gradually improved, such changes could naturally happen, although maybe only slowly for some years. If and when the Greek and Turkish populations residing in the north and south respectively increase, there would be the question of how their interests are served by government structures. Perhaps these issues will remain theoretical for quite some time, but it may be useful at least for the medium to long run to bear in mind that there can be three basic models:

- *The territorial model.* Here the sub-national governments coincide with the two language communities and exercise culture and education competences exclusively and only in their territories.
- *The bilingual model.* Here there is a bilingual/cultural regime for selected territories, such as for the national capital.

- *The personalised model.* In cases where there is a wide dispersion of reciprocal minorities, the language communities can make available services (such as in education and cultural fields) and exercise certain competences at the level of the individual, rather than the territory.

Belgium offers some examples. In the Flemish and Walloon regions the public sector school and university system remains exclusively monolingual. However private educational establishments are authorised to teach in the 'other' Belgian language, and other languages of the world. The Brussels region has a special bilingual status, some features of which might at some stage become relevant to Nicosia and Famagusta. The 'Brussels-capital' region has both French and Flemish public sector schools, which are controlled by the Flemish and French language community governments (this is a hybrid case, a cross between the bilingual and personalised models identified above). Particularly if the two cities of Nicosia and Famagusta-Varosha were to be administered by a joint city council (see Box 2 in the preceding chapter), one would envisage that community services in these cities would remain under the separate control of the constituent state authorities.

The several models mentioned may be adapted to changing ethno-demographic patterns. One is where the inner city of the capital sees important changes, with growing concentrations of foreign immigrant communities. Another is where the suburbs of the capital may expand very fast, and acquire quite different ethno-demographic characteristics compared to the historical ones. A third is the case where there would be an increase in a wide but thin dispersion of citizens from one community in the territory of the other. Once a minority-language community reaches a certain threshold, one technique could be to require the communal administration to deal with citizens in the language of their choice.

The Belgian case also provides an example of how administrative practice avoids the identification of individuals as belonging to one or another language community in any formal or legal sense. However citizens indicate to the local administration the language they prefer for the text of their identity cards. Concerning community services as well as elections, citizens in bi-communal Brussels are free to switch between the two community services at any point in time.

Both southern and northern Cyprus already have important centres of international educational activity. For example the Eastern Mediterranean University in northern Cyprus and Intercollege, Cyprus College and the University of Cyprus in the south all teach wholly or extensively in English. Educational facilities of quality are provided by independent educational institutions, and these are likely to expand, presumably under

regulations fixed by the department of education of the constituent state in which they were located. The common state (or the departments of education of the constituent states acting jointly) might retain responsibility for certain specialised institutions, schools and institutes of higher education.

A valuable instrument of reconciliation could be founded in a multi-lingual high school in Nicosia, along the lines of the European Schools of Brussels. The main feature would be the running of several language streams, following the same curriculum, on a single campus. Each student would be required to follow a certain number of courses in a second working language, apart from studies in a third 'foreign' language. Courses in the second working language include (in the European Schools) geography and history. The EU itself could, for example, take the initiative to found a new European School of Nicosia, building on the experience of the existing network of European schools that are already established in Belgium, Luxembourg, Italy, Germany and England.<sup>27</sup>

Historical textbooks would be the subject of bi-communal initiatives to reverse dreadful ethnic biases that have come in the wake of conflict and separation of the communities. There have already been pioneer projects in both Cyprus and the Balkans,<sup>28</sup> which have at least developed a set of principles that should be respected in producing such textbooks. In a re-unified Cyprus one could set up a joint committee of legislators and teachers, selected with the aid of cross-voting methods to enhance moderation, to work towards the achievement of these objectives, even with education remaining a competence of the constituent states.

<sup>27</sup> These European Schools were all established to serve the needs of the families of European civil servants. They accept other students, however, and one could imagine an EU policy initiative to set up and support new European schools for situations like Nicosia in the near future, as well as in some Balkan capital cities.

<sup>28</sup> The Center for Democracy and Reconciliation in South-East Europe has sponsored a Joint History Project (JHP), leading to the forthcoming (2002) publications: *Teaching History in Southeastern Europe*, and *Clio in the Balkans – The Politics of History Education*, both edited by C. Koulouri at the University of Western Thrace in Thessaloniki. We are grateful to the Center's board member responsible for the JHP for distilling for us the following principles flowing from this ongoing project: a) rigorous accuracy, b) recognition that the study of history is an ongoing process, c) refusal to 'prettify' history by concealing ugly episodes, d) acknowledgement of the positive achievements of the 'other', e) mention of one's own community's failings, f) avoidance of facile caricature of the 'other' and g) presentation of other points of view even if one's own is ultimately preferred.

### 3.12 Citizenship and human rights

Axiomatically for a single common state, there would be a single Cyprus citizenship, and supporting documents such as the passport. The general law on the criteria for acceding to Cypriot citizenship would also need to be defined at the national level. In the context of the current negotiations the idea of a bi-communal agency to deal with citizenship questions has also been suggested. An interim bi-communal authority to determine the precise numbers of Cypriots may indeed be necessary. However, in order not to complicate Cyprus' institutional structure further, the bi-communal agency should probably be integrated in common state institutions in the medium term.

However, implementation of the policy could be dealt with by the two constituent states. While the general policy would be determined at the central level, the technical regulations and implementation of the policy would fall under the competence of the constituent states. Hence, citizenship questions could effectively be shared between the two levels of government. In addition EU citizenship would represent another increasingly important layer in this field of competence.

Decentralised implementation however requires a considerable level of trust between the two communities, as one community may fear that decentralised implementation of citizenship would be manipulated by the other community to alter the demographic balance of the island. Until trust is restored, one could thus imagine that if implementation is decentralised, the central authority would retain some monitoring capacity over the decentralised administration throughout the island.

The question of citizenship is inextricably linked to the question of the Turkish settlers. Figures on the numbers of 'settlers' are disputed. Greek Cypriot officials claim that the number of Anatolian settlers in northern Cyprus may actually exceed the number of indigenous Turkish Cypriots. They consider that a high number of these settlers should be repatriated to Turkey in so far as they distort the demographic balance on the island and would prevent the emergence of a 'Cypriot identity' following reunification. The TRNC leadership instead holds that the settlers are considerably fewer and that many came from Turkey because of the demand for labour in northern Cyprus following partition.

The precise number of settlers cannot be easily determined. This is not only because of the politicisation of this question. Who exactly would count as a settler given that many of these people have been living in Cyprus for decades, they may be married to Turkish Cypriots or may have actually been born in Cyprus?

Citizenship policy at the common state level would have to answer these and other questions. One could imagine that the common state authorities could come up with a relatively simple set of criteria for citizenship. For example, only those residents who have lived in Cyprus for a given number of years, were born in Cyprus or were married to a Cypriot could claim common state citizenship.

Another question would be that of emigrated Cypriots. Would all the emigrated Greek and Turkish Cypriots be able to claim common state citizenship, including those who were born and always lived abroad in Europe, the US and Australia? Again the common state authorities would have to determine a general policy line and criteria for Cypriot citizenship.

Human rights are already the subject of comprehensive codification at the European level, with the Republic of Cyprus, as well as Greece and Turkey, having acceded to the European Convention for Human Rights and Fundamental Freedoms and all related protocols, and as implemented by the Court of Justice of Strasbourg. This would also be the case for the common state. It is possible that the EU's 2004 Intergovernmental Conference will give to this jurisprudence a more directly applicable status in EU law.

Finally, concerning citizenship, there would be the increased relative importance of EU citizenship within the EU. The parties to the Cyprus conflict have tended to associate the question of citizenship with identity politics and in particular demographic balances on the island. As such this question has been highly politicised, reducing the scope for compromise between the parties. However, within the European Union, citizenship is acquiring a different meaning and is being increasingly associated with human, economic and social rights, rather than with exclusively national or community affiliations. The same could be true for Cyprus. Cypriot citizenship could be articulated as a civic notion concerning rights and obligations and not a question of ethnic and community identification. Adding the EU dimension to the question of Cypriot citizenship could facilitate an agreement between the two parties.

### **3.13 Movement of persons, immigration and asylum**

There is a growing body of EU law and regulations governing the movement and residence of persons in EU member states. In addition there are the rules of the Schengen system, which are increasingly being integrated into EU law. All the candidate states are expected to adopt the whole of the EU and Schengen *acquis*, and to be capable of implementation at the time of accession. However the EU does not intend

to lift all frontier controls with the new member states for some time (probably years) after accession.

The fundamentals of policy over immigration, visas and residence permits would be set at the level of the common state, although there are ways of partial decentralisation of the system. For example the granting of work and/or residence permits may depend on objective conditions in the locality immediately concerned. There can be room for regional/local discretion in making decisions within the bounds of criteria set at the national level (as actually in Belgium).

The question of immigration, work and residence permits would also affect the future of the Turkish settlers in Cyprus. As mentioned above, not all Turkish settlers may receive Cypriot citizenship. The question is whether those settlers who would not become Cypriot citizens would be forced to leave Cyprus. The forced repatriation (some settlers may voluntarily choose to leave of course) of these settlers may both be unfeasible and it would run against the logic of attempting to de-ethnicise Cypriot politics and to construct a civic Cypriot identity instead.

Rapid economic development in the southern part of the island has been followed by a considerable flow of immigrant workers into the Republic (predominantly of Philippino and Russian origin), and southern Cyprus has become increasingly multicultural. With time the same would be true for the north as well. Repatriating Turkish settlers would also be a form of exclusionism vis-à-vis Turkey and counter the idea that Cyprus' EU membership could encourage the progressive integration of Turkey into the EU.

The EU has adopted a common visa policy vis-à-vis third countries. In particular there are lists of third countries that are exempt from visa requirements, those for whom visas are required and those for whom visas may be required at the choice of the member state. Turkey is currently on the list of countries for which visas are required. Although Bulgaria and Romania have recently acceded to the visa-free list, this is not yet in sight for Turkey. The introduction of visas for Turkish citizens who are not legally resident in Cyprus would be an unfortunate consequence of re-unification and accession to the EU.

Ways may be sought to avoid or at least mitigate the negative effects. One approach would be to intensify measures in Turkey to qualify for visa-free treatment. This may not, however, be achievable in the short run. One degree of freedom open to Schengen member states lies in the remaining competence of the member states for issuing long-term, multi-entry visas ('Schengen visas', administered by the member states but



subject to common rules and controls, are only issued for three-month periods). Cyprus would need to establish adequate consular facilities in Turkey.

Other approaches might be to build on existing precedents in the EU for territories separated from the continent by sea. This includes not only Ireland and the United Kingdom (outside Schengen), but also the Spanish provinces of Ceuta and Melilla enclaved in Morocco (Spain being in Schengen). For Cyprus there might be a transitional provision to permit Cyprus to remain visa-free for Turkish citizens for a transitional period, until Cyprus itself was accorded complete freedom of movement within the Schengen system (which could be some years after accession), or until Turkey acceded to the EU's visa-free list, which could certainly precede Turkey's full accession to the EU. Air and sea connections from Cyprus to the rest of the Schengen area and of the EU would be subject to control of passport or identity cards upon arrival. Citizens of Cyprus would of course have full access and citizen rights in the EU, comparable to that enjoyed by Spanish citizens arriving from Ceuta or Melilla, or British and Irish citizens arriving on the continent. Ireland and the UK have these arrangements as non-Schengen member states, but Spain is a Schengen member state.<sup>29</sup>

Cyprus has already provisionally closed the Justice and Home Affairs and Schengen chapters of its negotiations, but this was done before the recent re-opening of prospects for early re-unification and EU accession for the whole of Cyprus. Since Cyprus will presumably want to retain the fullest possible accession to Schengen, one could envisage a special protocol, under which Cyprus might accede to the Schengen Information System, and apply Schengen visa rules for all third countries, except for the special case of Turkey. Turkish citizens would, during the transitional period, have to obtain a Schengen visa to go to the rest of the Schengen area and EU.

The question of EU visa policy towards Turkey in the context of Cyprus' accession is only the tip of the iceberg of the wider set of issues for EU-

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<sup>29</sup> See the Agreement on the accession of Spain to the Schengen Convention, Final Act, 25 June 1991, *Official Journal* L239, Vol. 43, 22 September 2000. Moroccan citizens from the Tetouan and Nador provinces remain able to enter Ceuta and Melilla without visas. For its part 'Spain shall maintain checks (on identity and documents) on sea and air connections departing from Ceuta and Melilla and having as their sole destination any other place on Spanish territory. To the same end, Spain shall maintain checks on internal flights and on regular ferry connections departing from the towns of Ceuta and Melilla to a destination in another State party to the [Schengen] Convention'.

Turkish relations in the field of justice and home affairs. As recently analysed thoroughly by Kemal Kirişçi (2002), policies on asylum and irregular immigration pose hugely sensitive issues for Turkey, given its traditional openness to peoples of Turkic culture (Azerbaijan and Central Asia), and its frontiers with Iran (presently visa-free) and Iraq (with the Kurdish overlap). The EU and Turkey have embarked on a process of convergence by Turkey on the EU *acquis* in these areas, with obviously tough implications for these eastern neighbours of Turkey. Future EU visa policy for Turkey in relation to Cyprus should be judged in this wider context, with maximum effort to find constructive solutions along the lines suggested.

### 3.14 Foreign policy

Foreign policy was long considered a prime and exclusive competence of the nation state. The status of the sovereign state in international law remains of exceptional importance, as of course of great political significance. However the execution of foreign policy becomes a less exclusive competence in multi-tier government systems, where the alternative paradigm assigns entities responsibility for the external relations aspects of their domestic competences and responsibilities. In the 'Set of Ideas', the UN proposed that such a paradigm, known also as the principle of *in foro interno in foro externo*, be applied to Cyprus.

Belgium has also endorsed this principle of *in foro interno in foro externo*. Since the 1993 constitutional reforms, each level of government in Belgium has some limited competences to conclude international treaties and agreements with other states or sub-state entities. The limits relate to the respective areas of internal policy competence. Treaties can fall under the exclusive competence of one level of government. In these cases ratification of a treaty or agreement needs only to occur within the legislature of the relevant level of government. When instead an international treaty falls under the shared competence of different levels of government (either if the relevant policy area is itself a shared competence, or if the treaty in question covers different policy areas falling under the competence of different levels of government), then there is a system of coordination to avoid conflicts of competence. Ratification requires the consent of all the legislative bodies involved. Regions are thus free to engage in external relations provided they adhere to general principles of Belgian foreign policy. An inter-ministerial conference is set up to ensure the general coherence of foreign policy.

At the level of diplomatic representations in foreign countries, Belgium has developed a system whereby the Flemish or Walloon regions may

have their own representatives working within the Belgian embassy, but responsible to the Flemish or Walloon regional/community governments. Important competences handled by such representatives include cooperation in cultural and education projects, and export and investment promotion. The Belgian Permanent Representation to the EU includes delegates from the Flemish and Walloon regions, whereas the Spanish regions and German Länder have separate representations in Brussels. This is a reminder for Cyprus that two-entity states can do things that multi-entity states find impractical.

The handling of EU affairs itself requires a huge task of coordination in all government systems, and especially so in multi-tier systems, as already described in detail in an earlier section. Indeed EU affairs may no longer be considered 'foreign' or 'international' affairs within its member states, but rather another dimension to their internal affairs. Foreign ministries retain a role of coordinating EU policy, with their permanent representatives in Brussels (in the COREPER committee of EU ambassadors) playing a pivotal role in the management of each country's EU policy-making. It has become more often the case, however, that coordination of EU affairs is handled by the office of the prime minister, requiring more political authority than usually exists in the 'foreign ministry'.

### **3.15 Military and police forces**

If Cyprus becomes a de-militarised state, as agreed in the 1979 High Level agreement and also proposed in the 'Set of Ideas', there would be no ministry of defence at any level. However the security system, with international guarantees and peacekeeping presence for as long as necessary, will be a necessary part of the new regime, as addressed in the next section.

The organisation of the police force would presumably be done mainly at the level of the two constituent states, as proposed by the 'Set of Ideas', although there could be some national force and/or FBI-type agency at the common state level.

## CHAPTER 4

### TERRITORY, REFUGEES AND SECURITY

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**N**egotiations between the Greek and Turkish Cypriot leaderships will also be tackling a set of crucial transitional issues relating to territory, refugee return and security. The security regime will also have to have qualities of permanence, however, underwritten by guarantees. The security guarantees and peacekeeping functions would presumably involve the three original guarantor states (Greece, Turkey and the UK) as well as some combination of roles of the UN or possibly NATO or the EU.

#### **4.1 Territory**

It is generally understood that a settlement of the Cyprus question would entail some territorial readjustments. While the details of such adjustments are not known at this stage, some simple parameters seem widely expected. For example the territory to be controlled by the future northern constituent state would be smaller than that currently controlled by the Turkish Cypriot community. Also, the percentage of the total territory of the future northern constituent state would be greater than the percentage of the Turkish Cypriot population on the island.

During past negotiations, and in particular in the context of the 1992 discussions when the UN proposed a rough map to the two sides, the Turkish Cypriot leadership was willing to consider a Turkish Cypriot 'canton' amounting to 29%+ of the island's territory. The town of Varosha on the southern edge of Famagusta was a clear candidate for return to the Greek community, since it was originally largely owned by Greek Cypriots and foreigners, and has not been re-populated since 1974 (it has remained a 'ghost town'). But the Turkish Cypriot leadership objected to returning Morphou in northwest Cyprus to the status of a Greek Cypriot 'canton'. The Morphou area was seen as the most fertile in northern Cyprus, and as such critical to the Turkish Cypriot economy. The Greek Cypriot leadership accepted the UN map (reproduced at the end of the of the 'Set of Ideas' in Annex C) as a basis for discussion. However, it insisted upon the greatest possible readjustment to reflect as much as possible the distribution of population and land ownership. It has also been suggested that central Nicosia and Famagusta (with Varosha) could be areas with bilingual status (see Table 1).

The territorial readjustment between the two communities is clearly a matter between the two Cypriot communities alone, assisted by the UN if

and when needed. Resettlement considerations would no doubt take precedence over purely economic ones. In the 1992 negotiations, the Turkish Cypriot leadership rejected the UN map on the grounds that it would cause the displacement of over 37,000 people.

It seems quite likely that the majority of Turkish Cypriots living in the land that could become part of the southern constituent state might wish to relocate north. The territorial adjustments should be finely tuned so as to minimise the relocation of families. Territorial readjustments would also aim, however, to allow the greatest possible number of refugees to return to their homes, if they so wished. In practice, there is inevitably going to be an interdependence between the terms of territorial adjustments and refugee return. Given the importance attached by the Greek Cypriot leadership and community to the implementation of the right of return, and the insistence of the Turkish Cypriot community that northern Cyprus should remain predominantly Turkish Cypriot at least in the short/medium term, some territorial adjustments would be a way to satisfy both needs.

What may facilitate an agreement upon a map which would allow as many Greek Cypriots to return to their homes as possible (if they so wished) and as few as possible Turkish Cypriots to relocate further north (if they so wished) would be the fact that the constituent state border would not be a border between two independent states. As such, the parties may agree upon a relatively 'complicated' map, separating the two constituent states, allowing for example Lefka (as a traditional Turkish Cypriot village) to remain in the northern constituent state, while territory in the Morphou area to be transferred to the southern constituent state.

## 4.2 Refugees

The following basic principles were worked out in the 'Set of Ideas' of 1992:

*For Turkish Cypriots who currently live in areas to be given back to southern Cyprus, and Greek Cypriots who own properties there:*

- *Turkish Cypriots who were already there before 1974*
  - *Either remain in their property*
  - *Or receive a comparable residence in northern Cyprus.*
- *Turkish Cypriots who came as refugees from 1963 and 1974*
  - *Either receive a comparable residence in the same area,*
  - *Return to their former residence,*

- *Or receive comparable residence in northern Cyprus.*
- *Greek Cypriots who owned properties in those areas before 1974*
  - *Would be able to return to their properties.*

*For refugees from other areas in southern and northern Cyprus:*

- *Those wishing to return*
  - *These people would re-occupy their properties, and the present occupants would be relocated, unless the present occupant was also a displaced person, the building had been substantially altered, or been converted for public use, etc., in which case they join those receiving compensation.*
- *Those wishing to receive compensation*
  - *The value of their claims would be worked out by the special agency.*

We now consider how these ideas might be applied, also having in mind some more recent developments. While the general rights of all refugees would be identical, the implementation of their rights could depend on *when* the displaced persons left their properties and *where* those properties were located.

The territorial re-adjustments would lead to some voluntary re-location of Turkish Cypriots. This would allow a number of Greek Cypriot refugees (between one-half and two-thirds of their total, depending on the magnitude of the readjustment) to return to their former homes if they so wished.

Regarding both Greek and Turkish Cypriot refugees whose property would remain in the constituent state administered by the 'other' community, the 'Set of Ideas' elaborated a complex formula including return, exchange and compensation so as to satisfy the needs of both communities. Effectively those refugees would have the option of return, individual exchange of properties, or compensation.

Probably a relatively low percentage of refugees would choose to return to live in the constituent state not administered by their own community. These would probably include a very low number of Turkish Cypriot refugees and a relatively higher percentage of Greek Cypriot refugees. The constituent state authorities governing the region where the properties were located would process the individual demands for return.

The returnees would only be denied access to their original properties (and receive compensation or equivalent accommodation) under specific conditions. For example persons on record as having been involved in inter-communal violence might be denied access to property in the constituent state administered by the 'other community'.

In practice, many refugees would probably voluntarily opt for compensation or individual exchange. Compensation claims would be filed by the original owners (or heirs) of the properties within a set period following an agreement. The value of the claims would be calculated on the basis of the value of the property at the time of departure plus inflation. According to the 'Set of Ideas', separate agencies would be set up by the constituent states to administer compensation funds. The funds of the agencies would come both from within and from outside the island. One source of internal funding would be the sale of those properties owned by refugees who would choose not to return. The northern agency would be in charge of the sales of the properties belonging to Greek Cypriot refugees and vice versa for the southern agency. The respective funds from the sales of the properties would then be exchanged between the two agencies on a 'global communal basis'. Additional funds could be transferred to the constituent state agencies from the budgets of the common and constituent states.

In addition, external funding would be envisaged. In the past the US and Canada hinted that they would be willing to contribute a considerable sum for compensation. The EU and its member states (particularly the UK) would also be likely to contribute funds.

Since 1992, however, when the UN proposals were drawn up, the Loizidou case at the European Court of Human Rights (ECHR) in 1996 has introduced a new element.<sup>30</sup> Even if the two communities were to

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<sup>30</sup> In March 1989, the Greek Cypriot Titina Loizidou attempted to cross the 'green line' in order to reach her property in Kyrenia and was stopped by Turkish forces. In July Ms Loizidou filed a complaint to the European Court of Human Rights (no. 15318/89). The Court's rulings on the Loizidou case came in different stages. On 23 March 1995, the Court first accepted the premise that in the light of the ongoing conflict and the presence of Turkish forces in northern Cyprus, Turkey's jurisdiction was considered to extend to the northern part of the island. In its second ruling on 18 December 1996, the Court found Turkey guilty of violating Article 1, Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guaranteeing Ms. Loizidou's 'peaceful enjoyment of her possessions'. Finally on 28 July 1998, the ECHR requested a compensation of €800,000 from Turkey to Ms. Loizidou for denying the enjoyment of her property in Kyrenia.

agree upon a system of property exchange, there might be continuing challenges by any Cypriot individual deprived of his/her property by appealing to the ECHR. Following the Loizidou precedent there are currently around 150-200 individual Greek Cypriot cases filed against Turkey pending in the ECHR. Current negotiators are no doubt determined to leave no unresolved questions in any future package deal and are likely to work for solutions that would be least vulnerable to international law. Although the end result in terms of the numbers of returned refugees may remain unchanged, the Loizidou case has transformed the nature of the debate on these questions.

The Loizidou case, and further cases likely to follow this precedent, will no doubt be taken into account by current negotiators. However, in the event of agreement between the two communities, ratified in agreements and constitutional acts with the highest legal standing, international law in practice would surely heed its content. Although individual Cypriots would have the right to file complaints at the ECHR if they felt their property was being unjustly denied, it is unlikely that such cases would cause the entire agreement to collapse.

### **4.3 Security guarantees**

Consideration would have to be given to revising the 1959 Treaty of Guarantee, which spelt out the roles of the three guarantor powers (Greece, Turkey and the UK) in the affairs of the Republic of Cyprus. Article 4 of the Treaty allowed for the possibility, in the event of a breakdown of the Republic's constitutional order and if the guarantors failed to mobilise a multilateral response, of unilateral rights of intervention by any of the three guarantors. Since the signing of the 1959 Treaty, all three guarantors of the Republic infringed the Treaty by their actions or inactions. While a strong guarantee of the new constitutional order would seem called for, the 1959 Treaty in its original form would surely need amendment if not replacement.

Under a fresh or revised treaty the future common state of Cyprus might be guaranteed by Greece, Turkey and the European Union. The three parties would guarantee the independence and territorial integrity of the new state, ensure it against any unilateral change of the new constitutional order by either community, and safeguard the principles of the European Union throughout the island. If a new situation called for a reaction by the guarantors, there would be a presumption of first recourse to the EU for non-military intervention. The EU already has instruments at its disposal, to which the new Cyprus treaty could refer. In the event of a breach of the constitutional order, or a violation of the principles of



‘liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’ (Article 6.1 of the TEU), ‘the Council, acting by a qualified majority, may decide to suspend certain rights deriving from the application of the Treaty’ (Article 7.3 of the Treaty of Nice, ex-article 7). In other words, Articles 6 and 7 of the Treaty of the European Union would be integrated into the new Treaty of Guarantee allowing for a first non-military EU guarantorship both of the constitutional order and of the respect for the principles of the Union in Cyprus.

A non-military EU guarantee alone, however, may be considered insufficient. Indeed the leaderships of both Cypriot communities have accepted the continuation of the military guarantees of the 1959 Treaty.<sup>31</sup> In particular, the Turkish Cypriot community, still distrustful of the European Union, may consider that for last resort a hard Turkish guarantee was essential. The revised Treaty could thus retain the separate guarantees of Greece and Turkey in the event of a constitutional breakdown and a failure of the EU non-military guarantee to rectify the situation.

Adding the EU as a guarantor to the new state would serve two main purposes. First it would increase the credibility of the Treaty, given the strong deterrent force of possible EU sanctions. Second the inclusion of a ‘first-stop’ EU guarantee would reassure the Greek Cypriot community. In the hypothetical situation of a constitutional breakdown or an infringement of rights caused by the Greek Cypriot community, a Turkish intervention would only follow after the failure of warning and sanctions of the EU intended to rectify the situation. The disincentives on the Greek as well as Turkish Cypriot communities to infringe rights and agreements would be such that it would thus be virtually impossible to envisage repetition of the July-August 1974 scenario.

#### **4.4 Peacekeeping**

In addition to these guarantees, the new Cyprus common state would presumably also require peacekeeping forces for a transitional period of some years. The structure of the peacekeeping force could evolve over time. There would initially be separate Greek, Turkish and international

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<sup>31</sup> The continuation of the Treaty of Guarantee’s provisions for unilateral intervention were always demanded by the Turkish Cypriot leadership, which has always claimed that on last resort it would only trust Turkey to guarantee the security of the Turkish Cypriot community. In a recent interview with Mehmet Ali Birand published by CNN Turk (November 2001), President Clerides also stated that the Greek Cypriot side could accept a continuation of Turkish (as well as British and Greek) guarantorship.

contingents on the island. Adopting a revised version of the 1959 Treaty of Alliance, Greek and Turkish contingents would only have access to the southern and northern constituent states, respectively. The international force would be able to freely circulate throughout the island. In an initial period the three forces would probably remain under separate command. After a certain period, following the scaling down of Greek and Turkish contingents, there might be a single, unified international command structure. The force would remain on the island until the constituent states found it no longer necessary.

It may be discussed whether the peacekeeping force should be under UN, NATO or EU flags. A continued UN role would have the advantage of continuity. NATO on the other hand has both Greece and Turkey on strictly equal footing in all policy-making decisions. The EU and NATO are learning to work more closely together, and the present Cyprus issue might be a good case in point for constructive collaboration. To give further assurances of even-handedness, a non-EU NATO member state might be entrusted with leadership of the NATO peacekeeping force (Norway, for example, has excellent credentials for such a role).

However, if the EU had a place in the treaty of guarantee for non-military intervention, for which there are solid arguments, there could be a case also for the EU's Rapid Reaction Capability to take on the military peacekeeping role. On the other hand, Turkey would feel that it did not have a fully equal status alongside other EU member states, including Greece, as it would do in NATO.

Nonetheless, an EU security arrangement including Turkey could actually provide a channel to partly resolve the still open question of Turkey's role in ESDP. The current understanding between Turkey, the UK and the US would be to exclude Cyprus (as well as the Aegean) from the reach of the Rapid Reaction Force. But this understanding has not yet been agreed in the context of the EU, and Greece in particular has raised objections to this arrangement. A possible modification to the agreement as far as Cyprus was concerned could be to include Turkey fully in a Rapid Reaction Force presence in Cyprus. So rather than excluding Cyprus from ESDP, Turkey's concerns about an EU security role in Cyprus could be met by its full inclusion in this particular EU operation. The legal basis for this full inclusion, compared to other possible theatres of operation of the Rapid Reaction Force, would be Turkey's rights deriving from the Treaty of Guarantee. Such an arrangement could serve the double purpose of assuring Cyprus' security as well as resolving the remaining question of Turkey's role in ESDP in a manner that would draw Turkey increasingly into the EU orbit.

The peacekeeping force might be responsible for three primary functions. First, together with the Greek and Turkish forces in southern and northern Cyprus it would monitor the situation on the ground, preventing any inter-communal clashes particularly in identified potential 'hotspots' throughout the island. The force would investigate any development, which in the view of either the Greek Cypriot, the Turkish Cypriot or the other two guarantor powers, were deemed a threat to the security of either the constituent states or the common state. Second, it would monitor the disarmament of Greek Cypriot and Turkish Cypriot military and para-military forces. Third, the international force would supervise and verify the gradual reduction of Turkish and Greek forces on the island to equal numbers of soldiers and given quantities of equipment within a given number of months after the entry into force of the new constitution. Upon agreement of the two constituent states, Greek and Turkish forces could be further reduced with time.

Following the UN texts of 1979 and 1992, the common state of Cyprus would be a de-militarised island, apart from the international force (and the UK sovereign bases at Dhekelia and Akrotiri). The National Guard and the Turkish Cypriot Defence Forces and all para-military forces would be dissolved during the transition period. The Joint Defence Doctrine between the Republic of Cyprus and Greece would be rescinded, as for all defence agreements between Turkey and the present TRNC.

## CHAPTER 5

### **PREPARING FOR ACCESSION TO THE EUROPEAN UNION**

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The Republic of Cyprus (RoC) opened negotiations with the European Union on the 30 March 1998. At the time of writing, 24 out of 31 chapters have been provisionally closed. These include important sectors such as the four freedoms, EMU and justice and home affairs. The Commission expects to conclude the remaining chapters (competition, agriculture, taxation, regional policy and financial/budgetary provisions) by the summer of 2002. In the meantime the Commission will be also carrying out preparatory work for the drafting of Cyprus' Accession Treaty. This would allow the Accession Treaty to be signed in early 2003, and ratified by the European Parliament and 15 national parliaments in the course of 2003 and 2004, in order for Cyprus to become a full-fledged EU member state by 2004. The Turkish Cypriot authorities have not so far been part of this process. In the event of a political settlement to re-unify the island within the EU, the question would be how to integrate the Turkish Cypriots within the accession process as quickly and effectively as possible. This of course depends primarily on the timing of a settlement itself.

By far the best option would be for the terms of a settlement (which would itself be conditional upon EU membership) to be taken into account in the Accession Treaty. This could be possible if the two communities reached an agreement before the end of 2002. It would also provide the highest assurance to the Turkish Cypriot community that the arrangements agreed to with the EU to account for Turkish Cypriot concerns would not be vulnerable to adverse ECJ rulings (if for example specific deviations from the *acquis* were included in Cyprus' Accession Treaty, they would have the highest legal rank and thus be the least vulnerable to challenges from the ECJ).

If an agreement is in sight but could not be finalised before the end of the year, the Accession Treaty might be signed with the RoC, and a separate Protocol agreed with the Turkish Cypriot authorities following an agreement. The Accession Treaty would include provisions allowing for revisions that would follow from a settlement. The separate protocol affecting the northern part of the island would not require separate ratification by the EU. In this case, a settlement would need to be agreed during 2003.

The worst-case scenario would be if talks failed to reach an agreement prior to the accession of the RoC in 2004. Should this scenario materialise, the Union has repeatedly declared that the Accession Treaty

could be signed with the RoC, and that legally it would be deemed to represent the entire island, but implementation of EU legislation would be confined exclusively to the south. There has been much speculation about the adverse consequences of such an arrangement, to which we do not add here.

Returning to the first best option, i.e. agreement is reached before the Accession Treaty is finalised and ratified, the question is how this can be done. An option might be for the EU to mark a fresh start after closing chapter 29 with the present negotiation partner. The final two chapters are called 'institutions' and 'other'. These general chapters include questions such as the Copenhagen criteria and the principles of the Union. Chapters 30 and 31 would in any case be the starting points for the Turkish Cypriot community's integration into the EU. Compliance with the EU Copenhagen criteria is a prerequisite of EU membership. These two final chapters could therefore be negotiated by the two communities and the EU and would be fully integrated into the Accession Treaty.

It would also be highly desirable for the Commission to establish regular contact with the Turkish Cypriot authorities as early as possible in order for the former to inform the latter about the opportunities, obligations and possible transition periods/derogations to the *acquis*, as well as for the Turkish Cypriot authorities to voice their positions and concerns to the Union. A number of accession chapters, already provisionally closed with the Greek Cypriot negotiating team, would need to be revised. These may include chapters affecting the internal market, justice and home affairs, regional policy and structural funds to name a few.

The mode of inclusion inevitably runs into the thorny question of recognition. At present the only contacts are through information missions by officials of the EU Commission, with meetings conducted in non-official venues (universities, chambers of commerce, etc.). If there were a settlement in the next few months the problem would be automatically resolved. Contact between Turkish Cypriot officials and the EU would be established on the basis of the new status of the Turkish Cypriot community within the re-unified island. But it is more likely that if a settlement were reached, this would occur during or after the summer. The EU's current position is that it cannot establish official relations with the Turkish Cypriot authorities as this would be tantamount to recognition of the TRNC. The Turkish Cypriots instead claim that they would accept official contacts with the Union provided these were not subordinated to the Union's relations with the RoC. However, the amount of catch-up northern Cyprus would have to make in order to be integrated

into the Union is considerable. There is therefore little time available given the forthcoming expiry of the accession timetable.

A way of overcoming the recognition problem might be to establish relations with Turkish Cypriot officials as representatives of the 'future common state of Cyprus'. Provided the two community leaders felt that negotiations were progressing, the Union could establish relations with Turkish Cypriot officials on the grounds of their future status within a new partnership. In the same way that the Greek Cypriot authorities are currently negotiating with Turkish Cypriot officials without recognising the TRNC, the same could occur between the Turkish Cypriots and the Union.<sup>32</sup> The US recently hosted a reception in its premises in northern Cyprus, without recognising the TRNC. It presented this move as a gesture of encouragement towards peace. Regular contact between the EU and the Turkish Cypriot officials should be opened now without delay, to avoid precious time being wasted, and facilitate the fastest possible integration of northern Cyprus into the Union. It would also add an important momentum to the inter-communal negotiations currently going on, significantly raising the prospects of the entry of a reunified Cyprus into the EU by 2004.

Even if the first best scenario providing for the incorporation of a settlement into the Accession Treaty were possible, the implementation of many EU laws and regulations in northern Cyprus would require longer transition periods. Northern Cyprus could benefit from a pre-accession strategy beginning in early 2003. The objective would be the modernisation and catch-up of northern Cyprus.

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<sup>32</sup> Within the Greek Cypriot community there is also a growing debate concerning how trade between the two sides could be resumed. A recent draft report of the Council of Europe (24 January 2002) also suggested that the Union should resume its *de facto* trade with northern Cyprus, blocked after the 1994 ECJ decision.

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## ANNEXES

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### Annex A – Notes on the Cyprus economy

While there is no shortage of analysis about the economy of southern Cyprus, the north is less well known. The following therefore summarises the main comparative indicators between north and south, and goes on to describe in a little more detail the state of the northern economy, with basic statistics given in Tables A.1-A.3.

The great difference in GDP between north and south of 8.5:1 is made up of a population imbalance is about 3.5:1 (669,000 in the south, 209,000 in the north) and a GDP *per capita* imbalance of about 2.8:1. The GDP per capital figures for 2000 place the south (\$13,272) at 64% of the EU average, above Portugal and Greece. The north (\$4,978), at 29% of the EU average, is within the range of EU accession candidate states, and significantly higher than for Turkey (\$3,200). (The above figures are at market exchange rates. In terms of exchange rates in purchasing power parity (PPP), the differences are greatly reduced, and the south reaches 83% of the EU average. For the north PPP figures are not available).

The monetary and public finance indicators for the south are relatively close to the Maastricht criteria (inflation rate 4% in 2000, and budget deficit of 2.7% GDP). The north, which is part of the Turkish Lira area, has had an inflation rate of around 50% for many years, and in 2000 had a budget deficit of 6.6% of GDP (but without grants from Turkey the shortfall in budget revenues was 23% of GDP – see further below).

Both north and south are heavily dependent on tourism, but this is more marked in the north, at least partly due to the trade embargo by the EU. As a result exports of goods account for only 13% of imports for the north, whereas the ratio is 28% for the south.

The north has good economic potential. The Kyrenia coast line and the Karpasia peninsula are areas of outstanding natural beauty, and have avoided the over-rapid hotel and real estate development that has disfigured large stretches of the south-eastern coast line. The scope for a well-controlled expansion in the future is obvious, just awaiting favourable political conditions. The road infrastructure of the north is of generally good quality, and some notable highway investments have been made in recent years. Also some large investments in the international university sector have been made, notably at the Eastern Mediterranean University at Famagusta, which teaches entirely in English.

The north has suffered the seriously adverse consequences of the Turkish financial crisis of 2000, and has been in recession in 2000 and 2001, whereas the south has sustained a rapid rate of economic growth. The recession in the north has intensified the serious structural weaknesses of the economy. Five northern Cyprus banks in 2000, including the biggest one, collapsed. Many people lost banked savings. Subsequent to the large devaluation of the Turkish lire, and increased inflation unmatched by pay increases, real income levels suffered a very serious decline. Figures for 2001 are not yet available, but anecdotal evidence suggests 50% cuts in real incomes of public servants. The bank crisis also meant the drying up of credit for the private sector, further reducing investment. Production from the notable citrus fruit sector has stagnated over the last 20 years, and in 2000 was hit by bad luck, with a poor crop for climatic reasons.

The tourism sector has continued to grow, with notable inflows of capital into secondary residences by the London community of emigrated Turkish Cypriots as well as British, German and other Europeans. However this building boom of 1996-99 in real estate has had little effect on the rest of the economy, and the manufacturing sector is very depressed, suffering of course from the trade embargo.

On the other hand the public sector has continuously grown, with public expenditure now reaching 51% of GDP, compared to 28% in 1989. Yet public revenues have stagnated at about 28% GDP. All categories of public expenditure have grown as a share of GDP, but the largest element has been the growth of social welfare payments. There has emerged therefore over the last decade a huge increase in the financing requirement of the state budget, which has been met almost wholly by grants and loans from Turkey: these transfers reached 23% of northern Cyprus' GDP in 2000. The basic data on the public finances of northern Cyprus point to an increasingly aid-dependent and ultimately unsustainable picture.

These figures exclude the cost of the Turkish military presence. Whereas total civilian employment in the northern Cyprus economy amounts to 89,000 persons, the number of Turkish military personnel is reputed to be in the range of 35-45,000, thus between 40 to 50% of domestic employment. If the cost of the military were consolidated into the public finances of northern Cyprus, total public expenditure would probably amount to about two-thirds of GDP.

The financial aid by Turkey to northern Cyprus is partly indicated in the state budget. In 2000 grants and loans amounted to 150 billion Turkish lire, or about \$250 million at the current exchange rate. Turkey also helps to finance parts of the social security system that lie outside the budget,

and in addition there is the cost of the military. Overall the total in 2000 might have amounted to about \$400 million.

*Table A1. Cyprus, main economic indicators, 2000*

	<b>South</b>	<b>North</b>
GNP, \$ millions	8,879	1,040
GNP growth, %	5.1	-0.6
GNP per capita, \$	13,272	4,978
Inflation, %	4.1	53.1
Budget deficit, % GNP	2.0	6.6
Exports, \$ million	843	50
Imports, \$ million	3,564	425
Tourist revenue, \$ million	1,880	198
Population, thousands	669	209
Population growth, %	0.6	1.1

*Source:* Department of Statistics of the Republic of Cyprus, and State Planning Organisation of TRNC.

Table A2. Budget revenues and expenditure of Northern Cyprus, 2000, % GDP

	1990-94	1995-99	2000
Tax revenues	19.3	19.6	19.4
Direct taxes	10.5	11.2	11.4
Indirect taxes	8.9	8.3	8.0
Other income	4.1	5.1	5.8
Fund revenues	1.0	1.8	2.8
<b>Total Revenues</b>	<b>24.6</b>	<b>26.5</b>	<b>28.0</b>
Current expenditures	17.0	17.5	19.9
Social and other transfers	13.1	16.9	21.9
Defence	1.8	3.6	3.7
Investments	4.2	4.5	5.5
<b>Total Expenditures</b>	<b>36.2</b>	<b>47.2</b>	<b>51.0</b>
<b>Budget deficit</b>	<b>11.3</b>	<b>16.0</b>	<b>23.0</b>
Financed by:			
Foreign aid (Turkish)	4.0	10.3	16.4
Loans	7.5	5.7	6.6

Source: TRNC State Planning Organisation, *Economic and Social Indicators*, January 2002.

Table A3. Sectoral composition and growth of Northern Cyprus GDP

	% growth			% share GDP
	1990-99	2000	2001	2000
Agriculture	3.4	-13.2	..	7.9
Industry	1.9	4.0	..	12.2
Construction	5.9	18.7	..	9.3
Transport-communications	6.4	6.7	..	12.3
Trade-tourism	4.9	-5.4	..	16.4
Financial institutions	7.1	-6.8	..	5.9
Rent from dwellings	2.0	2.2	..	5.1
Business and personal services	16.2	-10.7	..	7.8
Public services	2.0	3.1	..	16.4
<b>Total</b>	<b>3.5</b>	<b>-0.6</b>	<b>-3.6</b>	<b>100</b>

Source: TRNC State Planning Organisation, *Economic and Social Indicators*, January 2002.

## **Annex B**

### **UN High Level Agreements of 1977 and 1979**

*Agreement of the 12 February 1977 between Makarios III and Rauf Denktas under the auspices of UN Secretary-General Kurt Waldheim*

- (a) We are seeking an independent, non-aligned and bi-communal Federal Republic.
- (b) The territory under the administration of each community should be discussed in the light of the economic viability or productivity and land ownership.
- (c) Questions of principles like freedom of movement, freedom of settlement, the right to property and other specific matters, are open for discussion, taking into consideration the fundamental basis of a bi-communal federal system and certain practical difficulties which may arise for the Turkish Cypriot community.
- (d) The powers and function of the central federal government will be such as to safeguard the unity of the country having regard to the bi-communal character of the state.

*Agreement of the 19 May 1979 between Spyros Kyprianou and Rauf Denktas under the auspices of UN Secretary-General Kurt Waldheim*

- (a) It was agreed to resume inter-communal talks on 15 June 1979.
- (b) The basis for the talks will be the Makarios-Denktas guidelines of 12 February 1977 and the UN resolutions relevant to the Cyprus question.
- (c) There should be respect for human rights and fundamental freedoms of all the citizens of the Republic.
- (d) The talks will deal with all territorial and constitutional aspects.
- (e) Priority will be given to reaching an agreement of the resettlement of Varosha under UN auspices simultaneously with the beginning of the consideration by the interlocutors of the constitutional and territorial aspects of a comprehensive settlement. After agreement on Varosha has been reached it will be implemented without awaiting the outcome of the discussion on other aspects of the Cyprus problem.
- (f) It will be agreed to abstain from any action which might jeopardise the outcome of the talks, and special importance will be given to initial practical measures by both sides to promote goodwill, mutual confidence and the return to normal conditions.
- (g) The demilitarisation of the Republic of Cyprus is envisaged and matters relating thereto will be discussed.

- (h) The independence, sovereignty, territorial integrity and non-alignment of the Republic should be adequately guaranteed against union in whole or in part with any other country and against any form of partition or secession.
- (i) The inter-communal talks will be carried out in a continuing and sustained manner, avoiding any delay.
- (j) The inter-communal talks will take place in Nicosia.

## **Annex C**

### **'Set of Ideas' on an Overall Framework Agreement on Cyprus**

*(Text of UN Secretary General Boutros-Boutros Ghali adopted in UN Resolution 750 on 10 April 1992)*

1. The leader of the Greek Cypriot community and the leader of the Turkish Cypriot community have negotiated on an equal footing, under the auspices of the mission of good offices of the Secretary-General, the following overall framework agreement on Cyprus which constitutes a major step towards a just and lasting settlement of the Cyprus question. The overall framework agreement will be submitted to the two communities in separate referendums within thirty days of its completion by the two leaders at a high-level international meeting.

#### **I. OVERALL OBJECTIVES**

2. The overall framework agreement is an integrated whole which, when it is approved by both communities in separate referendums and the provisions contained in the transitional arrangements have been implemented, will result in a new partnership and a new constitution for Cyprus that will govern the relations of the two communities on a federal basis that is bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects. The overall framework agreement is based on the 1977 and 1979 high-level agreements, relevant United Nations resolutions, in particular Security Council resolutions 367 (1975), 649 (1990), 716 (1991) and 750 (1992), and the guiding principles set out below.

3. The overall framework agreement recognizes that Cyprus is the common home of the Greek Cypriot community and of the Turkish Cypriot community and that their relationship is not one of majority and minority but one of two communities in the federal republic of Cyprus. It safeguards the cultural, religious, political, social and linguistic identity of each community.

4. The overall framework agreement ensures that the Cyprus settlement is based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as defined in paragraph 11 of the Secretary General's report of 3 April 1992 (S/23780) in a bi-communal and bi-zonal federation, and that the settlement must exclude union in whole or in part with any other country or any form of partition or secession.

5. The overall framework agreement acknowledges and ensures the political equality of the two communities. While political equality does not mean equal numerical participation in all branches and administration of the federal government, it will be reflected in the fact that the approval and amendment of the federal constitution will require the approval of both communities; in the effective participation of both communities in all organs and decisions of the federal government; in safeguards to ensure that the federal government will not



be empowered to adopt any measures against the interests of one community; and in the equality and identical powers and functions of the two federated states.

6. The overall framework agreement provides for functions and powers of the federal government, including its structure, composition and functioning of its three branches, that will ensure the effective participation of the two communities and the effective functioning of the federal government, which will require an appropriate deadlock-resolving machinery.

7. The two communities acknowledge each other's identity and integrity, and commit themselves to work actively to achieve a new relationship based on mutual respect, friendship and co-operation. Toward this end, the two communities agree to change all practices incompatible with this commitment and to refrain from any action which would impair the efforts for a negotiated settlement. They pledge to launch immediately a programme of action to promote goodwill and closer relations between them (see appendix).

## **II. GUIDING PRINCIPLES**

8. The bi-communal and bi-zonal federation will be established freely by the Greek Cypriot and Turkish Cypriot communities. All powers not vested by them in the federal government will rest with the two federated states.

9. The federal constitution will come into force after its approval by the two communities in separate referendums and can only be amended with the approval of both federated states.

10. The federal republic will be one territory composed of two politically equal federated states.

11. The federal republic will have one sovereignty which is indivisible and which emanates equally from the Greek Cypriot and Turkish Cypriot communities. One community cannot claim sovereignty over the other community. The federal republic will have one international personality and one citizenship regulated by federal law in accordance with the federal constitution.

12. The federal constitution will safeguard the identity, integrity and security of each community as well as their political, economic, social, cultural, linguistic and religious rights. All citizens will be equal under the law.

13. The federal republic will be secular. Religious functionaries will be prohibited from holding elected or appointed political office in the federal government or in the federated states.

14. The federal republic will maintain special ties of friendship with Greece and Turkey and will accord most favoured nation treatment to Greece and Turkey in connection with all agreements whatever their nature. The federal republic will continue the membership in the Commonwealth.

15. The official languages of the federal republic will be Greek and Turkish. The English language may also be used.

16. The federal republic will have its own flag to be agreed upon. The federal flag will be flown on federal buildings and federal locations to the exclusion of all other flags. Each federated state will have its own flag.

17. The holidays to be observed by the federal government will be agreed upon and embodied in the federal constitution. Each federated state will observe the federal holidays as well as those established by it.

18. The two federated states will have identical powers and functions.

19. Each federated state will be administered by one community.

20. Each federated state will decide on its own governmental arrangement in a manner consistent with the federal constitution.

21. The federal Government cannot encroach upon the powers and functions of the two federated states.

22. Security, law and order and the administration of justice in its territory will be the responsibility of each federated state in a manner consistent with the federal constitution.

23. The two federated states will cooperate in the preservation and / or use of historical sites and religious shrines of both faiths to be agreed to during the transitional period.

### **III. CONSTITUTIONAL ASPECTS OF THE FEDERATION**

24. The powers, functions and structure of the federal Government will be in conformity with the overall objectives and guiding principles set out above.

#### **A. Powers and functions to be vested in the federal Government**

25. The federal Government will have the powers and functions listed below. All powers and functions not vested in the federal Government will rest with the two federated states. The federated states may decide jointly to confer additional powers and functions to the federal Government or to transfer powers and functions from the federal Government to the federated states.

26. The federal Government will have the following powers and functions:

(a) Foreign affairs (the federated states may enter into agreements with foreign Governments and international organizations in their areas of competence. The representation in foreign affairs will reflect the bi-communal nature of the federal republic);

(b) Central bank functions (including the issuance of currency);

(c) Customs and the coordination of international trade;

(d) Airports and ports as concerns international matters;

(e) Federal budget and federal taxation;

(f) Immigration and citizenship;

(g) Defense (to be discussed also in connection with the Treaties of Guarantee and of Alliance);

(h) Federal judiciary and federal police;

(i) Federal postal and telecommunications services;

(j) Patents and trademarks;

(k) Appointment of federal officials and civil servants (on a 70:30 Greek Cypriot/Turkish Cypriot ratio);

(l) Standard setting for public health, environment, use and preservation of natural resources, and weights and measures;

(m) Coordination of tourism and industrial activities.

27. The federal powers and functions will be executed by the federal Government or, in accordance with agreements, through delegation to the federated states.

## **B. STRUCTURE, COMPOSITION AND FUNCTIONING OF THE FEDERAL GOVERNMENT**

### **1. The Legislature**

28. The legislature will be composed of a lower house and an upper house. The presidents of the lower house and of the upper house cannot come from the same community. The president and vice-president of each house will not come from the same community.

29. All laws must be approved by both houses.

The lower house will be bi-communal with a 70:30 Greek Cypriot / Turkish Cypriot ratio.

31. The upper house will have a 50:50 ratio representing the two federated states.

32. All laws will be adopted by majority in each house. A majority of the Greek Cypriot or Turkish Cypriot representatives in the lower house may decide, on matters related to foreign affairs, defence, security, budget, taxation, immigration and citizenship, that the adoption of a law in the lower house will require separate majorities of the representatives of both communities.

33. Separate Greek Cypriot and Turkish Cypriot majorities will be required to constitute a quorum in each house. If a quorum is not attained in either house on two consecutive meetings because of the absence of a majority of one or both communities, the president of the relevant house will call a meeting in no less than five days and no more than ten days. At that meeting, a majority of the upper house will constitute a quorum. In the lower house, 30% of the total membership will constitute a quorum.

34. If the two houses fail to adopt a bill or decision, they will initiate proceedings to obtain a consensus while ensuring the continued functioning of the federal

government. To this end, a conference committee will be established. The conference committee will be composed of two persons each selected by the Greek Cypriot and Turkish Cypriot groups equally from among the members of the two houses of the federal legislature. The text of the legislation or decision agreed to by the conference committee will be submitted to both houses for approval.

35. In the event the federal budget is not adopted in one or both houses and until an agreement is reached by the conference committee and is adopted by both houses, the provisions of the most recent federal budget plus inflation shall remain in effect.

## **2. The Executive**

36. The federal executive will consist of a federal president, a federal vice-president, and a federal council of ministers. The president and the vice president will symbolize the unity of the country and the political equality of the two communities.

(On the question of the election of the president and vice-president, the two sides have expressed different positions. The Greek Cypriot side prefers a system under which the president is elected by popular universal suffrage. The Turkish Cypriot side prefers a system under which the president rotates between the two communities).

37. To facilitate the effective launching of the federal government and for the initial eight years, the president and vice-president will also be the heads of their respective federated states.

38. There will be a council of ministers composed of Greek Cypriot and Turkish Cypriot ministers on a 7:3 ratio. The president and vice-president will designate the ministers from their respective communities who will appoint them by an instrument signed by them both. One of the following three ministries, that is foreign affairs, finance, or defence, will be allocated to a Turkish Cypriot minister. The president and the foreign minister will not come from the same community.

39. The president and the vice-president will discuss the preparation of the agenda of the council of ministers and each can include items in the agenda.

40. Decisions of the council of ministers will be taken by majority vote. However, decisions of the council of ministers concerning foreign affairs, defence, security, budget, taxation, immigration and citizenship will require the concurrence of both the president and the vice-president.

41. Arrangements related to the implementation of foreign policy and the composition of the foreign service will be set out in the federal constitution.

42. The president and the vice-president will, separately or conjointly, have the right to veto any law or decision of the legislature concerning foreign affairs, defence, security, budget, taxation, immigration and citizenship. The president and vice-president will have the right, separately or conjointly, to return any law

or decision of the legislature or any decision of the council of ministers for reconsideration.

### **3. The Judiciary**

43. The federal judiciary will consist of a supreme court composed of an equal number of Greek Cypriot and Turkish Cypriot judges appointed jointly by the president and vice-president with the consent of the upper house. The supreme court will sit as the federal constitutional court and the highest court of the federation. Its presidency will rotate between the senior Greek Cypriot and Turkish Cypriot members of the supreme court. Lower federal courts may be established in each federated state.

44. The supreme court will deal with matters arising under the federal constitution and federal laws, and will be empowered to fulfil other judiciary functions related to federal matters attributed to it by the federal constitution or federal legislation.

45. Each federated state will have its own judiciary to deal with matters not attributed to the federal judiciary by the federal constitution.

46. The federal constitution will establish the procedure for ascertaining the constitutionality of federal laws and executive acts, as well as adequate machinery of judicial review to ensure the compliance of legislative, executive, and judicial acts of the federated states with the federal constitution.

C. Fundamental rights, including the three freedoms, and political, economic, social, and cultural rights

47. All universally recognised fundamental rights and freedoms will be included in the federal constitution.

48. The freedom of movement, the freedom of settlement and the right to property will be safeguarded in the federal constitution. The implementation of these rights will take into account the 1977 high-level agreement and the guiding principles set out above.

49. The freedom of movement will be exercised without any restrictions as soon as the federal republic is established, subject only to non-discriminatory normal police functions.

50. The freedom of settlement and the right to property will be implemented after the resettlement process arising from the territorial adjustments has been completed. The federated states will regulate these rights in a manner to be agreed upon during the transitional period consistent with the federal constitution.

51. Persons who are known to have been or are actively involved in acts of violence or in incitement to violence and/or hatred against persons of the other community may, subject to due process of law, be prevented from going to the federated state administered by the other community.

#### IV. SECURITY AND GUARANTEE

52. The security of the federal republic and of the Greek Cypriot and Turkish Cypriot federated states will be guaranteed.

53. The demilitarization of the federal republic remains an objective.

54. The 1960 Treaties of Guarantee and of Alliance continue in force and will be supplemented in a document to be appended as set out below.

55. The Treaty of Guarantee will ensure the independence and territorial integrity of the federal republic and exclude union in whole or in part with any other country and any form of partition or secession; ensure the security of the Greek Cypriot and the Turkish Cypriot federated states; and ensure against the unilateral change of the new constitutional order of the federal republic by either community.

56. A numerical balance of Greek and Greek Cypriot troops and equipment on the one hand and of Turkish and Turkish Cypriot troops and equipment on the other hand will be achieved within \_\_\_\_\_ months after the overall framework agreement has been approved by the two communities in separate referendums.

57. A timetable will be established for the further reduction to an agreed level of the Greek Cypriot and the Turkish Cypriot units and for the withdrawal of all non-Cypriot forces not provided for under the Treaty of Alliance. This timetable will be fully implemented prior to the establishment of the federal republic and in phases parallel to the implementation of the programme of action set out in annex.

58. The Treaty of Alliance will provide for the stationing in Cyprus of Greek and Turkish contingents of equal size and equipment not exceeding \_\_\_\_\_ persons each. The Greek contingent will be stationed in the federated state administered by the Greek Cypriot community and cannot enter the federated state administered by the Turkish Cypriot community. The Turkish contingent will be stationed in the federated state administered by the Turkish Cypriot community and cannot enter the federated state administered by the Greek Cypriot community.

59. The federal republic will maintain a federal force consisting of a Greek Cypriot and a Turkish Cypriot unit of equal size and equipment not exceeding the size of the Greek and Turkish contingents, under the joint overall command of the president and the vice-president. The Greek Cypriot unit will be stationed in the federated state administered by the Greek Cypriot community. The Turkish Cypriot unit will be stationed in the federated state administered by the Turkish Cypriot community. The president and the vice-president will jointly decide on the locations of the units.

60. There will not be any reserve force and any military or paramilitary training of civilian groups.

61. The Greek Cypriot and Turkish Cypriot units will promote mutual respect, friendship, and closer relations between the two communities and foster their

welfare by carrying out joint social service activities throughout the federal republic.

62. Each federated state and the federal republic will have a police force. All paramilitary activities and the ownership of weapons other than those licensed for hunting will be outlawed throughout the federal republic and any infraction will be a federal offense. The importation or transit of weapons and other military equipment other than that duly approved by the federal government will be prohibited.

63. Immediately after the approval of the overall framework agreement by the two communities in separate referendums, an interim monitoring committee will be established composed of the three guarantor powers, the two communities and the United Nations Peace-keeping Force in Cyprus (UNFICYP) which will be responsible for:

(a) Monitoring the achievement of the agreed numerical balance of Greek and Greek Cypriot troops and equipment on the one hand and Turkish and Turkish Cypriot troops and equipment on the other hand to be implemented within \_\_\_\_\_ months after the overall framework agreement has been approved by the two communities in separate referendums;

(b) Monitoring the achievement of the agreed timetable for the further reduction to the agreed level of Greek Cypriot and Turkish Cypriot units and the withdrawal of all non-Cypriot forces not provided for in the Treaty of Alliance prior to the establishment of the federal republic.

64. The Treaty of Guarantee, in a manner consistent with the principles of the Conference on Security and Cooperation in Europe (CSCE), with which the federal republic will affirm its commitment, will provide for a supervision and verification committee comprising representatives of the guarantor powers and of the federal president and federal vice-president. The United Nations will provide the support personnel to assist the supervision and verification committee in carrying out its functions.

65. The supervision and verification committee will be responsible for investigating any development which in the view of either the federal president or federal vice-president or any guarantor power is a threat to the security of either community or of the federal republic through on-site inspection and other methods the supervision and verification committee deems necessary. The supervision and verification committee will make recommendations for rectifying any situation it has established to be in contravention of the arrangements covered by the Treaties of Guarantee and of Alliance. The parties will be obligated to implement these recommendations promptly and in good will.

66. The United Nations Security Council will be requested to revise the mandate of UNFICYP, including support of the supervision and verification committee.

## **V. TERRITORIAL ADJUSTMENTS**

67. The Greek Cypriot and Turkish Cypriot communities agree on the territories of the federated states administered by each, taking into account the 1977 high-level agreement.

68. The map attached hereto sets out the territories of the two federated states. The territorial agreement shall be respected and will be included in the federal constitution.

69. Persons affected by the territorial adjustments will have the option of remaining in the area concerned or relocating to the federated state administered by their own community.

70. All necessary arrangements for the relocation of persons affected by territorial adjustments will be satisfactorily implemented before resettlements are carried out. The fund to be established related to displaced persons will be available for this purpose.

71. The territorial adjustment will not affect the water resources available to each federated state. The water resources available throughout the federation will be allocated to the two federated states at a proportion at least equal to their respective current demand.

## **VI. DISPLACED PERSONS**

72. The property claims of Greek Cypriot and Turkish Cypriot displaced persons are recognized and will be dealt with fairly on the basis of a time-frame and practical regulations based on the 1977 high-level agreement, on the need to ensure social peace and harmony, and on the arrangements set out below.

### **A. Areas that will come under Greek Cypriot administration**

73. The first priority will be given to the satisfactory relocation of and support for Turkish Cypriots living in the area that will come under Greek Cypriot administration and to displaced persons returning to that area.

74. Turkish Cypriots who in 1974 resided in the area that will come under Greek Cypriot administration will have the option to remain in their property or to request to receive a comparable residence in the area that will come under Turkish Cypriot administration. Turkish Cypriot displaced persons currently residing in the area that will come under Greek Cypriot administration will have the option to receive comparable residence in that area, to return to their former residence, or to receive a comparable residence in the area that will come under Turkish Cypriot administration.

75. A bi-communal committee will be established immediately after the overall framework agreement has been approved in the referendums to arrange for suitable housing for all persons affected by the territorial adjustments.

### **B. Other areas under Greek Cypriot and Turkish Cypriot administration**



76. Each community will establish an agency to deal with all matters related to displaced persons.

77. The ownership of the property of displaced persons, in respect of which those persons seek compensation, will be transferred to the ownership of the community in which the property is located. To this end, all titles of properties will be exchanged on a global communal basis between the two agencies at the 1974 value plus inflation. Displaced persons will be compensated by the agency of their community from funds obtained from the sale of the properties transferred to the agency, or through the exchange of property. The shortfall in funds necessary for compensation will be covered by the federal Government from a compensation fund obtained from various possible sources such as windfall taxes on the increased value of transferred properties following the overall agreement, and savings from defense spending. Governments and international organizations will also be invited to contribute to the compensation fund. In this connection, the option of long-term leasing and other commercial arrangements may also be considered.

78. Persons from both communities who in 1974 resided and / or owned property in the federated state administered by the other community or their heirs will be able to file compensation claims. Persons belonging to the Turkish Cypriot community who were displaced after December 1963 or their heirs may also file claims.

79. Current permanent residents of Cyprus who at the time of displacement owned their permanent residence in the federated state administered by the other community and who wish to resume their permanent residence at that location may also select the option to return.

80. Current permanent residents of Cyprus who at the time of displacement rented their permanent residence in the federated state administered by the other community and who wish to resume their permanent residence in that area will be given priority under the freedom of settlement arrangements.

81. All claims must be filed within six months after the approval of the overall framework agreement.

82. \_\_\_\_\_ thousand displaced persons who elect to return to their former permanent residence will be processed by the federated state concerned each year for \_\_\_\_\_ years. In addition, Maronites who in 1974 had their permanent residence in the federated state under the administration of the Turkish Cypriot community may elect to return to their properties. The two federated states will review the situation at the conclusion of the above mentioned period in the light of the experience gained.

83. This period will begin after the resettlement and rehabilitation process arising from territorial adjustments are essentially completed.

84. The settlement of those who select to return will take place after the persons who will be affected have been satisfactorily relocated. If the current occupant is also a displaced person and wishes to remain, or if the property has been

substantially altered or has been converted to public use, the former permanent resident will be compensated or will be provided an accommodation of similar value.

85. Persons who are known to have been actively or are actively involved in acts of violence or incitement to violence and / or hatred against persons of the other community may, subject to due process of law, be prevented from returning to the federated state administered by the other community.

## **VII. ECONOMIC DEVELOPMENT AND SAFEGUARDS**

86. A priority objective of the federal republic will be the development of a balanced economy that will benefit equally both federated states. A major programme of action will be established to correct the economic imbalance and ensure economic equilibrium between the two communities through special measures to promote the development of the federated state administered by the Turkish Cypriot community. A special fund will be established for this purpose. Foreign Governments and international organizations will be invited by the Security Council to contribute to this fund.

87. To help promote a balanced economy, persons may be employed throughout the federal republic at equal pay.

88. To protect in particular the federated state administered by the Turkish Cypriot community, special measures and safeguards will be adopted to avoid adverse economic effects resulting from the establishment of the federal republic, for example as a result of the adoption of one currency and the establishment of one customs frontier.

89. Each federated state may, in addition to federal taxation, establish and administer its own tax regime and determine tax rates in line with its economic objectives and needs.

90. In line with annex F, part II, of the Treaty of Establishment, the federal republic will accord most favoured nation treatment to Greece and Turkey in connection with all agreements whatever their nature.

91. A bi-communal committee will be established as part of the transitional arrangements to prepare the special programmes and measures envisaged above prior to the establishment of the federal republic. The United Nations Development Programme (UNDP) will provide the committee with support. The committee may request other expert assistance as required.

92. Matters related to the membership of the federal republic in the European Economic Community will be discussed and agreed to, and will be submitted for the approval of the two communities in separate referendums. (This paragraph relates exclusively to arrangements that might be put in place in Cyprus and in no way impinges upon the prerogatives of the European Community and its member states in matters concerning membership in the Community).

**VIII. TRANSITIONAL ARRANGEMENTS**

93. Immediately after the approval in separate referendums of the overall framework agreement on Cyprus, the following transitional arrangements will be carried out to implement the overall framework agreement, including the preparation and putting into force of the federal constitution. All transitional arrangements will be fully implemented in an 18- month period.

94. In line with this overall framework agreement, bi-communal committees will be established immediately to implement the provisions related to the preparation and putting into force of the federal constitution and electoral law, the establishment of the federal civil service, property settlement claims, economic development and safeguards, arrangements related to the territorial adjustments to take effect at the time the federal republic is established, and the programme of action set out in the appendix. Furthermore, a committee composed of the representatives of the guarantor powers and the two communities will be established to supplement the Treaties of Guarantee and of Alliance. The United Nations will assist each committee in fulfilling its functions. Each side may employ foreign experts.

95. In addition, a committee composed of the leaders of the two communities and a representative of the Secretary-General of the United Nations will be established immediately to work out the transitional arrangements procedures foreseen herein and to ensure that the functions of the above mentioned committees are implemented in an effective and timely manner. Furthermore, this committee will, within 30 days of its completion by the two leaders at a high-level international meeting, organize separate referendums to approve the overall framework agreement, and, at the appropriate time during the transitional period, organize separate referendums to approve the federal constitution and the elections of federal officials with the assistance of and verification by the United Nations.

96. During the transitional period, the current arrangements for the administration of the day-to-day internal affairs of each side will continue, unless modified by the provisions of the overall framework agreement. In matters affecting Cyprus as a whole, such as international trade and tourism, the same principle shall apply on the understanding that these matters will be administered on an interim basis in the common interest. To this end, interim procedures will be agreed to by the two communities.

97. During the transitional period, external affairs shall be conducted in a manner which accords with the principles contained in the overall framework agreement and in consensus with the leaders of the two communities. Arrangements shall be made for joint delegations, in particular to international meetings.

98. The statutes, laws, regulations, rules, contracts currently in effect on both sides shall be considered valid to the extent they are not inconsistent with the overall framework agreement. The federal government may review prior international agreements to determine whether any action should be taken in respect thereto.

99. Each community will prepare its federated state constitution and electoral law in line with the federal constitution and electoral law, and will organize its federated state governmental arrangements which shall both come into being at the same time that the federal republic is established.

100. The date of entry into force of the federal constitution will be specified therein and will be the date on which the federal republic comes into being.

#### **IX. NOTIFICATION TO THE UNITED NATIONS**

101. As soon as the overall framework agreement has been approved in separate referendums by each community, the leaders of the two communities will address a letter to the Secretary-General of the United Nations transmitting to him the text of the overall framework agreement with the request that he submit the letter and the overall framework agreement to the Security Council so that the Council may take note of the decision of the two communities to establish a federal republic in the manner described in the overall framework agreement.

#### **APPENDIX**

As soon as the overall framework agreement has been approved by the two communities in separate referendums the following programme of action to promote goodwill and close relations between the two communities will be implemented.

1. The flow of persons and goods, services, capital, communication, and international assistance from and / or to Cyprus will take place on an equal basis throughout Cyprus and any restrictions to the contrary will be lifted.
2. All restrictions on travel by members of the Turkish Cypriot community will be lifted. The two communities will agree on interim procedures.
3. The restrictions on the movement of tourists will be lifted.
4. Objections to the participation in international sport and cultural activities will be lifted.
5. The freedom of movement will be facilitated subject, by way of agreement between the two communities, only to minimal procedures.
6. Pending the establishment of the federal republic, Varosha will be placed under United Nations administration and a programme of action for its restoration will be prepared and implemented.
7. All military modernization programmes and strengthening of positions will cease. The two sides will cooperate with UNFICYP in extending the unmanning of positions along the buffer zone to all areas where the troops of both sides remain in close proximity to each other. The freedom of movement of UNFICYP throughout Cyprus will be ensured.
8. A bi-communal committee will be established to review the textbooks used in schools on each side and make recommendations for the removal of material that

is contrary to the promotion of goodwill and close relations between the two communities. The committee may also recommend positive measures to promote that objective.

9. Both communities will promote goodwill and close relations between them and friendly relations with Greece and Turkey.

10. Both communities will, within the limits of their authority, terminate all current or pending recourse before an international body against the other community or Greece or Turkey.

11. A bi-communal committee will be established to survey the water situation in Cyprus and make recommendations on ways of meeting the water needs of Cyprus, including from external sources. The committee may request expert assistance as required.

12. A bi-communal committee will be established to prepare and launch a programme of action for the restoration of historical and religious sites throughout Cyprus. The committee may request expert assistance as required.

13. A bi-communal committee will be established to undertake a population census of both communities. The committee may request expert assistance as required.

14. The two communities undertake to support the efforts of the Committee on Missing Persons to reach early conclusions wherever possible on the fate of the missing persons. To this end, the Committee is requested to undertake without delay the investigation of all cases of missing persons and, to this end, to reassess the criteria for arriving at conclusions on the fate of the missing.

**Map of Cyprus as proposed by the UN in 1992**

*Note:* the shaded line represents the actual cease-fire line. The sharp black line represents the UN proposal. The black shaded areas are the British sovereign military bases.

