

PERCEPTIONS
JOURNAL OF INTERNATIONAL AFFAIRS

September - November 1999

Volume IV - Number 3

GREEK CYPRIOT APPLICATION FOR EUROPEAN UNION MEMBERSHIP*

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*This paper was presented at the international conference entitled 'Cyprus: The Supremacy of Law, Political Realities and the Need to Adapt to Changes' at the Eastern Mediterranean University, Gazimagusa, Turkish Republic of Northern Cyprus, 2-6 June 1999.

When our friends from various EU institutions, member states or from the US suggest that the best way to solve the Cyprus problem is EU membership as a bi-communal, bi-zonal Cypriot federation, they seem to disregard the supranational characteristics of the Union.

In a final settlement of the Cyprus problem, Turkish Cypriots would no doubt request guarantees and safeguards in the constitution that would ensure an equal voice in the government.

When one looks at the 1960 Constitution, the mechanism provided therein will be described as 'functional federation'. In fact, the 1960 Constitution and the Zurich and London Agreements created a state of affairs not only between Turkish and Greek Cypriots, but also between the two motherlands, Greece and Turkey. The Constitution was for a Greek President (elected only by the Greek Cypriots) and a Turkish Vice-president (elected only by the Turkish Cypriots), a Council of Ministers with three Turkish and seven Greek ministers (the Turkish side appointing, among others, the Minister of Foreign Affairs & Defence), and a House of Representatives, public administration and security forces formed on a 40-60 ratio between the two communities. Also, each community had its own Communal Chamber and, in the five biggest towns, the Turkish Cypriots had separate municipalities. These checks and balances in the Constitution and in the Treaties establishing an independent Republic of Cyprus were based on the premise that this delicate balance or equilibrium, if you will, should not be tilted in favour of one or the other side in its international relations, especially through memberships of international organisations. The drafters of the Constitution realised that if the Republic of Cyprus joined an international organisation in which only Greece or Turkey was a member, the carefully drafted balance between the two communities, all the provisions specifically built into the Constitution for the protection of the Turkish community, would change in favour of the other side.

It is interesting to note that the Zurich and London Agreements were negotiated in the first few months of 1959 and finalised in July 1959. Incidentally, at the same time both Athens and Ankara applied to the EEC for associate membership. One does not guess or wonder which international organisation they had in mind when they stipulated that Cyprus could not join unless Greece and Turkey were both members. Certainly, membership in a standard type of international organisation like the World Health Organisation or the Universal Postal Union was not what they had in mind. The term supranational was not used that much in those days, with the exception of some scholarly work. In fact, until the famous van Gend en Loos case in 1962 (case 26/62; 1963 CMLR 105, Court of Justice of the European Communities), the supranational character of the community was somewhat neglected in official literature.

Although Commission officials may not recognise the right of veto of Turkish Cypriots in foreign affairs, Mr Clerides in his memoirs explains this veto power of the Turkish Cypriots under the Constitution of Cyprus: “Clearly, the Vice-President would have acted within his constitutional rights if he had decided to use the veto the Constitution gave him on matters of foreign policy” (Glafcos Clerides, *My Deposition*, Vol. 1, pp. 124-126, Nicosia, 1989).¹

When Turkish Cypriots consider membership of the EU, either

- a. they study the impact of accession as an independent state (the Turkish Republic of Northern Cyprus, TRNC) and its implications for them as to the timing (whether it is before or after Turkey’s accession) and try to analyse their position in the institutional framework, or
- b. they try to see what their position would be if they were in a federal Cyprus under the banner of a Turkish federated state.

However, after weighing the position of an independent TRNC as a full member of the EU (on its own and before Turkey’s accession), the difficulties it would face as a state with only one vote in the Council (if any, after the institutional reform) and its chances in the decision-making system, an evaluation of being in the EU under the umbrella of a federal Cyprus would certainly result in a more dramatic conclusion. The Greek Cypriot Republic of Southern Cyprus probably would not object if representation of mini- or microstates is restricted in the Commission, in the Council and in the European Parliament. (Certainly, in a European Parliament with a maximum of 750 seats, countries like Luxembourg would not be able to send six MEPs, but at most two—in order to allow maybe one opposition representative—and maybe only one.) Even if the TRNC were admitted as a full member, its representation in EU institutions would be less than a minimal level. The Greek Cypriot Republic of Southern Cyprus might not mind such a minimal representation or no representation at all for mini- or smaller states; Greece is already a member state and represented in all the institutions and has performed extremely well in recent years, through the actual or threatened use of its veto, in representing Greek Cypriot interests in the EU.

When a bi-communal and bi-zonal federation was agreed between the two sides (between Mr Denktash and Mr Makarios in 1977), membership of the EU was not in any way under consideration. It was something that was unthinkable. Bi-communality and bi-zonality were accepted as the main principles of a future federation at a time when that federation was not going to join any supranational institution like the EU: the previous ban under the 1960 Treaties and the limitation of sovereignty on this matter naturally would continue. The EU did not realise that by introducing the issue of membership of a supranational organisation such as the EU, where member states transfer some of their sovereign powers to Community institutions, the parameters on which the solution was based completely changed. Indeed, when the bi-communal, bi-zonal federation was envisaged, it was based on the fact that Cyprus would be independent so that the delicate balance between two sides would not be affected. By introducing the EU membership issue, the whole set-up, all the parameters of a possible solution, the basic principles on which the federation was based have changed.

That is why, in a book I published two years ago (*EU and Cyprus—in View of the Supranational Character of EU Institutions and EU Law*, (in Turkish) Yeditepe University Press, Istanbul, August 1997, 415 pages), I argued that the solution under the new circumstances has to be transformed from federation into confederation and that membership of the EU would only be possible after Turkey’s accession. A detailed analysis of the status of the TRNC as an EU member state on its own, its representation in EU institutions, the balance of power, etc. has to be examined carefully.

Furthermore, there is a question about the nature of the EU. It is going through an institutional reform process, whereby the composition of EU institutions (Commission, Council, European Parliament and the European Court of Justice) and their powers, rules concerning voting requirements, etc. are under a comprehensive

review. So, nobody really knows the exact status and framework the EU will take before accession. How can Turkish Cypriots envisage a constitutional framework in Cyprus before the complete picture of the EU becomes definitive?²

Although it is not possible to examine every aspect of this representation, be that as it may, either as an independent Turkish Cypriot state or under a federal umbrella as an equal partner of the state concerned, I can mention a few issues that readily come to mind.

Officials of some of the Union's institutions, (among others, the Head of Commission Representation in Nicosia, Mr Giles Annouil, who was accredited to the Greek Cypriot Administration) have been actively involved in efforts to convince Turkish Cypriots that "membership would enable them to be represented in important Community institutions", "that they would not any more need the guarantee of Turkey because the European Court of Justice would be their most efficient guarantee and security", etc.

If we assume that, indeed, a bi-communal, bi-zonal federation has been established and that this Federal Republic of Cyprus has become a member of the European Union, will the Turkish Cypriot Federated State be represented in the important decision-making institutions of the Union? The Commission representatives' answer is that the "important decision-making institution" that the Turkish Cypriots would be represented in is the Committee of the Regions and the Turkish Cypriots may, if they are lucky, take part in this Committee as a 'region' of a member state. For those who may wish to evaluate the importance of being represented in this 'important' decision making institution of the Union, I refer you to Article 198a (art. 263 in the consolidated text) of the Treaty Establishing the Community which provides that it is "a Committee consisting of representatives of regional and local bodies" and it has only an "advisory status".³

At the present time, when the decision-making procedures and the representation of member states in the Community institutions are being reviewed before the next enlargement, which could result in 20 to 30 member states, there are some reform proposals on the table:

- The Commission, already composed of 20 members must be reduced in size, possibly to a college of only 10 Commissioners, which would mean that larger member states would no longer nominate two Commissioners and also that not all the member states could send somebody to this executive body. Some scenarios under discussion suggest that mini states should not nominate their citizens to this important institution, which is considered to be the guardian of the Treaties. In a Union of say 25-30 member states, even if the Big States' (Germany, France, Italy, UK and Spain) right to nominate two Commissioners were reduced to one person each, it is not expected that countries like Malta, Estonia, Latvia, Cyprus and even Slovenia would be represented in the Commission. If it is decided that the Commission would be reduced in size in order to have an effective mechanism, then in addition to Luxembourg, relatively small countries like Ireland, Denmark and maybe even some bigger members, may be nominating their own candidates to the Commission on a rotating basis.

- As the real legislative power of the Union is exercised by the Council in co-operation with the European Parliament and Commission, the federal state's representation on the Council would be important. As the supranational characteristics of the EU institutions are important, let us even assume that a solution to the Cyprus problem has been found in such a way that both Republics on the island join the EU as independent member states. The Turkish Republic of Northern Cyprus has a population of 200,000 and the Greek Cypriot Republic has a population of 600,000. Today, larger member states have 10 votes in the Council. The smallest country, Luxembourg, in this weighted majority weighs quite heavy and has two votes with a population of a mere 340,000, whereas Germany with 87 million has only 10. The total number of votes today adds up to 87 for the 15 member states. In order to have a decision adopted by a qualified majority, the minimum number of votes required is 62. (Thus the blocking minority is 26 votes.) Before the last enlargement, the total number of votes was 76 and for an action that required a qualified majority, a minimum of 54 votes was necessary. After enlargement, 54/76 became 62/87. Thus, the blocking minority vote increased from 23 to 26, which means the

number of votes required to stop a legislative act being adopted increased from 23 to 26.

The UK Government strongly opposed increasing the blocking minority votes from 23 to 26. However, with the increase in the number of member states from 12 to 15, the number of total votes also increased to 87 and the qualified majority changed from 54/76 to 62/87. It was thus normal that the minimum number of votes to block a decision would rise from 23 to 26, but the UK government, which is one of the Big States with the maximum 10 votes, was resisting the increase of the blocking minority from 23 to 26. Britain resisted this change for three months and only agreed with the Yanya (Ioannina) Compromise, whereby it was accepted that once 62 votes are reached, the decision will not be taken immediately but efforts will continue to reach 65. The Council would have to do everything in its power to reach 65 while respecting the time limit provided in Article 189b,c.4

If, for a big member state like the UK that has 10 votes, the increase in the minimum number of votes to block a decision by a qualified majority from 23 to 26 is considered against its vital national interest, one can imagine the position of a small member state like the Turkish Republic of Northern Cyprus, which would probably have one vote, if any, in the decision-making process. The Greek Cypriot Republic probably would also have one vote, but an important factor would be Greece and its representation in the Council with five votes. Furthermore, Greece is fully represented in all EU institutions.

In a recent book, entitled *Orchestrating Europe—the Informal Politics of the European Union 1973-1995* (London, 1996), Keith Middlemans underlines the fact that member states need to establish coalitions in order to get a decision. A big country, even one with ten votes, needs a lot of support both for the adoption of a legislative act and for blocking one: “It is barely open, even to small states, to play the field at will: genuine national interest in common”. Even if the Turkish Republic of Northern Cyprus was admitted as a full EU member before Turkey’s accession, taking into consideration Athens’s performance since 1981 (from the Macedonia crisis to imposing a total blockade on Turkey’s relations with the EU), with a second Hellenic republic sitting at the table, how could the TRNC defend her interests and with which member states could she try to establish coalitions?

Where would the “minimum genuine national interest in common” be for the TRNC, which would make such coalitions possible?

This point also demonstrates the importance of the Cyprus Treaty provisions that do not allow Cyprus to join an international organisation of which both Greece and Turkey are not members.

Mr Jean-Louis Bourlanges, after serving as an MEP and as a top French bureaucrat, makes the following observation:

“At the present time, there is a growing mistrust between the small and large Member States. This is partly because the EU’s current decision-making system has evolved under the treaties ... Furthermore, the balance of power between the Member States is by nature unstable.” (Bourlanges, J.L., ‘Achieving a New Balance between Small and Large Member States’, In *A Larger EU, Can all Member States be Equal?*, Brussels, 1996, p. 27.)

It is clear that the provisions that forbid Cyprus to join an international organisation of which both motherland countries, Turkey and Greece, are not members were carefully considered and fully justified. And of course, this ban on Cypriot membership was operational even when the Turkish Cypriot community fully participated in the functional federative system under the 1960 Constitution. That is to say, when there was a Turkish Cypriot Vice-president, three Turkish Ministers in office, 40 per cent of members of the House of Representatives were Turkish Cypriots, and so on.

Even if the 1960 Constitution was fully respected today with the complete participation of the Turkish side in

this partnership, the Republic of Cyprus would not have the legal capacity (rechtsfähigkeit) to join an international organisation unless both Greece and Turkey were full members. Otherwise, the careful balance established in the Constitution, the specific safeguards, the delicate checks and balances would be destroyed as the balance would tilt in favour of the side whose motherland was a full member, whereas the other side would be, in the case of the EU, effectively excluded from the decision-making process. It is for that reason that the Constitution and the Treaties establishing the Republic of Cyprus as an independent state, restricted Cypriot sovereignty, and provided that it cannot join such an international organisation.

And this limitation of sovereignty, which is provided not only in the Constitution but also in the Treaty of Guarantee, do not give Cyprus the legal capacity to join such an international organisation. And this restriction was foreseen even when everything in Cyprus would be functioning completely in accordance with its Constitution in perfect harmony. Greek Cypriots have not followed the Constitution since December 1963 when they pushed the Turks out of government and, therefore, the present Greek Cypriot regime has no constitutional legitimacy. The fact that since the March 1964 decision of the UN Security Council (referring to the Greek Cypriot administration as “the government”) many countries have recognised the Greek Cypriot administration as the government, does not change the fact that it is an unconstitutional regime—it does not have a legitimate constitution.

With the implementation of the four basic freedoms within the EU, there would be problems in that the security and protection gained by bi-zonality could disappear. The argument that some long-term derogations could be provided in the accession treaty so that Greeks would not intrude into the Turkish zone sounds interesting at first sight. Examples of such derogations include the ban on Germans acquiring property on some Danish islands and some special status for the Åland Islands between Sweden and Finland. Since the possible derogations would be in the accession treaty, any action against them could be taken to the Court of Justice.

Here the question would be the following: who can bring an action in the Court of Justice? Could a subdivision of a federal state bring an action under Article 170? This article provides that “a Member State” which considers that “another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice”. Could the Turkish Cypriot federated state bring an action against federal Cyprus or the Greek Cypriot federated state? No, these would be internal constitutional matters that could only be settled in the national constitutional court. A court in Luxembourg could not interfere in internal constitutional matters. The experience of the Supreme Constitutional Court of Cyprus between 1960-1963, resulting in the resignation of Chief Justice Prof. Dr Forsthoff, is not encouraging at all.

Matters may be referred to the Court under Article 177 of the Treaty as a “preliminary ruling procedure”, but only if the local court decides to do so. Although the highest courts against whose decisions there is no appeal must refer the matter to the European Court of Justice (ECJ) in Luxembourg, there have been some examples of violation of this vital Treaty rule without remedy (Boletín Oficial del estado, 15 March 1991, case 28/1991). The time required for a preliminary ruling is around 25 months and examples of non-compliance by member states cover a lot of pages in the European press (see ‘Justice Grinding to a Halt’, *The European*, 24-30 August 1995, p. 1).

In order to have the ECJ as a guarantor of provisions, derogations, etc., the Turkish side (TRNC) must be admitted as a full member state that can bring an action in the Court on its own under Article 170. Otherwise, avenues open for a federated state within a member state are extremely restricted and, in an atmosphere of conflict, which is not unexpected taking into consideration the fifty years of violent clashes, such a federated state would be ‘locked in’ with no other avenues available to it.

I wonder whether the Åland Islands between Finland and Sweden, two countries with no serious mutual conflict over several centuries, could be an example for Cyprus. The new provision of the Amsterdam Treaty with the threat of the suspension of “certain rights deriving from the application of this Treaty” of a member state in serious and persistent breach of human rights, liberty, democracy, or fundamental freedoms, would not

be a threat to a federal Cyprus republic, although this member state will not have a right to veto such a decision, nothing in the new Article 7 (Article F.1.) prevents a blockade by Greece, another member state.

Thus, from whichever angle one looks at this matter, the Treaty provisions of 1960 that do not allow Cyprus to join an international organisation unless both Greece and Turkey are full members, are not only understandable but also realistic and fully justified.

Those who suggest that Cypriot membership of the EU would solve all the problems may be unaware of the tensions that exist between member states of the Union today (even though there is no background of violent conflict as there has been between Greek and Turkish Cypriots over the last four decades).

Middlemans, in *Orchestrating Europe*, compares the struggles between member states with the Prophet Isaiah's description:

“According to the prophet Isaiah, Joseph and the angel wrestled all night and still vied with each other when the dawn broke. In the sense that competition continues within the Community despite the new title European Union, the image applies. But, as far as Member States are concerned, the struggle has several faces. They compete generally among themselves according to the dictates of national self-interest, but also in groups of varying size on lines set by affinity or choice.” (p. 331.)

One should read the following remarks of Middlemans while envisaging Turkish Cypriot accession before Turkey joins the EU:

“Unending contests take place over boundaries and competencies. If it had not been so, the 1960's federalists' dreams might have been more successful ... Personalities and alignments, national perceptions of interests, define what is to be in the group interest and when Member States and the Commission will find themselves on the same side. It is a political market place ...” (p. 339.)

The MEP, Mr Bourlanges, points out, “Successful enlargement of the EU calls for a clearer division between the representation and operational functions of the Member States. At present, each EU institution is made up of representatives from Member States who share day to day management responsibilities. This structure, which met the needs of the early members of the European Community, would be inappropriate in a Union of up to 30 members”.

Prof. Dr Martin Seidel, who is a top official in Bonn, made the following observations (as if he were talking about Turkish Cypriots joining the EU as a separate independent state, but not under a federal umbrella) in the Philip Morris Institute Conference:

“... the citizens of the Union, despite electing their representatives to the European Parliament, have only very limited extent direct relationship with the Union and its institutions. The EU is run by and for its Member States, and it derives its legitimacy from them... The EU is a Community of individual and separate states... Within the context of the first pillar, the EU does not have the regulatory and legislative authority that amounts to genuine sovereign power. But this power is derived from the Member States themselves and not directly from citizens. Because of its particular structure as a community of states, only the Member States exercise Community sovereignty.”

Mr George Robertson, when he was Shadow Scottish Minister of State, made the following remarks in 1996, which is relevant to the importance of continuation of the sovereign state of the Turkish Republic of Northern Cyprus: “National identity is still very important. Talk of a Europe of Regions is something for the century after next. For the time being, the nation state and its relationship with the suprastatal Community architecture at the centre remains the key problem for the EU.” (Philip Morris, p. 62)

The foreign policy spokesman of the Czech Christian Democratic Party, Mr Lobkowicz, asks the following question: “What does equal representation of members mean in an organisation with as complex an institutional structure as the EU?” Here is how he replies, as if he had the TRNC in mind: “In my opinion, the most important aspect of equality for Member States is their participation in the decision making process, and their ability to be represented politically and to co-decide.” (‘Legitimacy or Efficiency: the IGC’s Dilemma’, in Philip Morris, p. 49.)

An experienced MEP from Germany, Mr Elman Brok, notes, “Few citizens really understand the way the Union works. Most view the EU’s political and administrative structure as a conglomerate of institutions and decision-making procedures whose functioning and interaction is barely comprehensible, even to experts... Because the citizens do not understand the way the EU works, they feel they have very little influence on European affairs, and their views therefore have little significance”.

How would a citizen of the Turkish Republic of Northern Cyprus evaluate his or her position in the EU under a federal umbrella when he continues to read Mr Brok’s remarks? “The EU’s current decision-making procedures are so manifold, so complicated and so impenetrable that the only way to make them transparent is to reform them. Shrinking from such reform would be dangerous... The average citizen is not speaking out because the EU’s institutional structures are too complicated to comprehend and its decision-making procedures are too labyrinthian to follow”.

How would a small federated state, a land, or a region, if you will, under a federal structure, hope to protect its own interests, first in the federation itself and then within the EU? Mr Brok says, “At present, the EU’s procedures are too complex to be suitable for even media coverage. This leads to little coherent information appearing during the various stages of legislation. Since information is scarce, the average citizen cannot follow the EU legislative process as he does national affairs. There is a void which is filled by ignorance. Ignorance breeds fear and fear can be stirred by populists and opponents of European integration so that it becomes rejection not only of a single proposal, but of the EU as a whole”.

How would the Turkish Cypriot leadership operate in a federal structure vis-à-vis Community legislation, taking into consideration the following comments of Mr Brok? “When public contempt focuses on over-regulation, over-harmonisation and autocracy from Brussels, national politicians often conceal the fact that these directives and regulations are not the prerogative of a super-bureaucracy in Brussels. But do in fact, represent the powers of the Council of Ministers, which, of course, is composed of government representatives of each of the 15 Member States”. (Under a federal Cyprus, Turkish Cypriot interests would hardly have a sympathetic ear in Brussels before Turkey became a full member.)

As if all of the above were not enough, let us look at the comments of the Swedish Minister of Foreign Affairs: “Secrecy is one of the EU’s weak points. The system of secret ‘declarations’, which limit or lay down conditions for the decisions taken by the Council of Ministers, has no justification”. But in such a system, when in the Council of Ministers you have a minister from Greece plus a representative of Federal Cyprus (most likely a Greek), how would you feel as a small community? Like a lamb in a pack of wolves?

What about the argument focusing on subsidiarity? Proponents of EU membership present it as a guarantee for Turkish Cypriots. Does this make sense? Mr Paddy Ashdown, a leading British politician says, in his view, “The whole question of federalism hinges on defining exactly what the powers of the federal institutions are, and what the rights and responsibilities of the other components of government—local, regional and national—should be. As long as we hide behind a fuzzy word like ‘subsidiarity’, the public will be confused and the national governments will be frightened”. If national governments will be frightened, what about the position of a would-be federated entity, as they wish to push the Turkish Cypriot State as sub-entity under a federal umbrella.

Prof. Alan Dashwood and Prof. Derrick Wyatt, on the other hand, ask “whether the principle of subsidiarity is justiciable? The better view is, perhaps, that the content of the principle is too imprecise for it to constitute, on its own, grounds for reviewing the validity of an act of the Council or the Commission”. (European Community Law, London, 1993, p. 650.) Of course, we must remember, under Article 170, it is only member states that can bring an action in the Court of Justice, not sub-divisions of a member state.

Paddy Ashdown sounds like he is answering a question concerning the Turkish Republic of Northern Cyprus when he submits the following: “Who will determine the principles of decentralisation or subsidiarity should apply? This is the central question, and we have ducked it. We have hidden behind the word ‘subsidiarity’, yet nobody knows what it means. This is one of the reasons why people are frightened of Europe. We must come up with a clear and understandable definition of the separation of powers between federal and national institutions. No federal structure can work unless we do that”. In the case of Cyprus, this balance has to be achieved first in a federal state and secondly within the EU, another federal and supranational structure. The task is not easy. Here is how Mr Ashdown evaluates the issues: “The laws the Council passes have a profound effect on people’s lives. It is simply unacceptable for these decisions to be taken by the Council in secret and for the fallout to be blamed on bureaucrats in the Commission”. Ashdown also says “... the way Council horse-trading has gone, particularly over issues like Bosnia, has led to things that have been manifestly inappropriate and wrong”. (Paddy Ashdown, ‘How We Can Make Europe more Relevant to Voters?’, How Can the EU’s Voters Have Their Say?, The Philip Morris Institute, Brussels, 1995, p. 17-19.)

A former Minister of Foreign Affairs of Italy made the following comments in a Brussels seminar some time ago: “During a recent visit to Finland, I raised the issue with the local authorities of the Council of Ministers possibly becoming excessively large in the future. They replied by reminding me of their history of relative exclusion from European political processes and the intricacies of Community policy. In this, I sensed their fear of becoming a small, remote German province.” (In a Larger EU Can all Members be Equal?, Brussels, 1996, p. 27.)

If a full member state, with a population of five million, represented in the Council of Ministers with three votes, with a right to nominate a Commissioner, with a judge in the Court of Justice, with 16 members in the European Parliament, with enough number of eurocrats in the Commission within the quotas, with the right to bring action in the Court of Justice, with all other rights and privileges of membership, “fears of becoming a small, remote German province”, taking into consideration the actual distance between the two countries and the fact that there is not a substantial German community in Finland, even if there were - there is no history of hatred or animosity between the two; one should try to visualize what the situation of Turkish Cypriots would be in a so-called federal state, facing Greeks three times their size and presence, with extreme hatred and desires of revenge from the Greek side, with full-scale military manoeuvres being staged, (with the full participation of the Greek Air Force F-16 fighter jets taking part in military games, thereby violating airspace of the Turkish Republic of Northern Cyprus, ending with the declaration that the areas in the north were cleaned from Turkish Cypriots).

A top Commission official and distinguished legal scholar, Prof. Dr P.S.R.F. Mathijsen, well known for his informative and excellent book *A Guide to European Union Law*, which made its sixth edition in 1995, after many years of experience in Community institutions, broadly describes the functions and shortcomings of the Community institutions so well that for the Government of the Turkish Republic of Northern Cyprus, it constitutes a perfect guide when membership of the EU becomes a subject of discussion and evaluations:

- “The Council tends to act as an inter-governmental conference where every member fights for his country’s interests”
- “The Commission, which besides its overwhelming administrative task must also fulfil a political function, is bound to accept compromises in the implementation of Community legislation by the Member

States”

- “Parliament does not have all the required powers to exercise effective democratic control”
- “There is the statement that the Community is ‘based on the rule of law’, in other words, the law prevails over all other considerations. The basic rule is not always well perceived by the member states and there lies, therefore, a particular task for the Courts in ensuring the application of the law” (p. 83).

Regardless of whether Cyprus were a federation, confederation or there were an independent Turkish Republic of Northern Cyprus, it is clear that Cyprus’s membership of the EU before Turkey’s accession, because of the supranational character of the EU and with the specific internal balance as explained above, is not acceptable and fully justifies the provisions of the Treaties establishing Cyprus as an independent state and constitution, which limit the legal capacity (rechtsfähigkeit) of Cyprus to join an international organisation unless both motherland countries are full members. After all, a former EU Ambassador in Turkey, Mr Michael Lake, after completing a seven-year term in Ankara, wrote in his ‘End of Post’ report that “Greek membership of the EC upset the balance in the region which previous ministers had carefully maintained. The imbalance seriously undermines western strategic and economic interests in the region” He adds: “The EU is driving Turkey into irrational behaviour on Cyprus”. “Turkey is forcing the EU to negotiate only with the Greek Cypriots and to confront the EU with membership of the Greek Cypriots. My personal view is that it is unacceptable to be negotiating admission with a government that plans to introduce Russian missiles aimed at one of our allies. Are we ready to put the Greek Cypriot Republic of Cyprus before Turkey? Which is more important to our long-term strategic and economic interests? “The talks under the aegis of UNSC were balanced: both sides were recognised as equal communities. The proposed accession negotiations as yet make no provision for any equality of status for Northern Cyprus”.

1 The three-volume memoirs of the Greek Cypriot leader, written in 1989, are extremely illuminating and therefore contain some important points covering the 1960-1974 period. One can assume that had the current leaders of the EU member states and officials of the Community institutions had any idea about the events of that particular period, they would not be sitting in front of the Greek Cypriot representatives, who have no constitutional legitimacy for what they call “accession negotiations”.

2 For five different scenarios for the future of the EU, see Tindemans, Leo, *Europe: Your Choice—Five Options for Tomorrow’s Europe*, Sammy van Tuyll van Serooskerken (ed.), London, 1995.

3 The Committee of Regions in which Turkish Cypriots would be represented receives a lot of comments from many scholars. Keith Middlemans seems extremely critical: “So much imprecision hangs about the Committee of Regions that it could be argued that the twelve member states simply followed an old tradition of trying out an attractive idea in a loosely worded text, then retired to see what would happen. The Treaty’s text offered no definition of what a region was, or how such a Committee should be chosen.” (*Orchestrating Europe—the Informal Politics of the EU*, p. 384.) He continues: “Whether or not the wilder hopes attached to regionality, either as the test case for subsidiarity or as the basis for experiments by an EU developmental state, were justified is still debatable, as is the significance of that odd speculative creature, the Committee of Regions, to which Maastricht gave birth.” It is clear that “the main decision-making body in which the Turkish Cypriots would be represented”, according to the Commission Representative in Cyprus, actually has no status or power that could be regarded as a meaningful safeguard for Turkish Cypriots. The implication that being represented in this ‘important committee’ would enable the Turkish Cypriots to obtain maximum benefit from Community funds seems also totally baseless, as pointed out by Middlemans, “where member States dictate the terms, that is in the case of roughly 85% of regional aid by volume, national distinctions persist, as they did when governments chose their representatives on the Committee of regions” (p. 398). “Europe and the regions without nation states will be a complete disaster because there will not be adequate means of integrating the EU itself”. What about the argument that the Commission, which is the guardian of the Treaties, would intervene to protect the Turkish side in Cyprus, in case the federal government usurps the Turks rights? The

same scholar replies in his book, *Orchestrating Europe—the Informal Politics of the EU*: “The Commission has rarely (if ever) intervened on behalf of a region against the interest of a Member State. Yet, some regions are undoubtedly exploited by their national authorities and might welcome redress, if it came in constitutionally admissible ways”. Middlemans notes that “Delors pointed out that the continued existence of economic and social disparities implies that the political union will be restricted to more favoured regions and member State capitals. But where the redistribution touches political resources the Committee of Regions is unlikely to be able to help” (p. 399).

4 This is how a Minister of Foreign Affairs of Italy explains the background to the Yanya (Ioannina) Compromise: “During the time I was Italy’s Minister of Foreign Affairs, the gravest tensions among the EU partners occurred when the relatively small nations of Austria, Finland and Sweden and at that time Norway, were in the process of joining the Union. The issue at stake became how to modify the Council of Ministers’ voting mechanism to reflect the increase in the number of votes resulting from the accession of four new countries. At that time 54 votes out of a total of 76 were required for the adoption of proposals coming from the Commission. This meant that in a Union of 12 member states, 23 votes—or the votes of 2 large countries and one small one—could block a decision. However, following the arrivals of Helsinki, Stockholm and Vienna and Oslo as well, had the Norwegians joined, and applying the same calculation criteria, the blocking veto would have increased to 27. The problem was felt most acutely outside the original core countries. Britain and Spain became entrenched in their positions for at least two months, until the Ioninina Agreement was reached during the Greek presidency in 1994. London and Madrid were determined to retain the 23-vote veto, which in the context of the new 16-member EU meant lowering the real threshold of overall dissent from 30 percent to 25 percent. Their intention was to make it easier to exercise a veto.” (Andreatta, B., ‘The IGC Must Tackle the Tensions of EU Integration’, In a Larger EU, Can all Member States be Equal?, Brussels, 1996, p.15. Philip Morris Institute of Public Administration). Here is what the Italian Minister said (also for being ‘singled out’ on some issues): “I, myself, became aware of the risk that Italy would be left systematically in a minority on specific issues such as Mediterranean agricultural policy”. How would the TRNC weigh in this balance as an independent state? Joining the EU as a federated state under the umbrella of a Federal Cyprus would of course create difficulties for the constitutional safeguards of Turkish Cypriots. Even if the Turkish Cypriots could have the final say for the Republic of Cyprus, which is of course highly unlikely, the situation would be similar to the previous case with possibly one or two votes in the Council whereas Greece is already a full member. The required balance for Cyprus cannot be achieved until Turkey joins the EU as a full member. That shows that the drafters of the 1960 Constitution had clear foresight when they embodied the ban that Cyprus could not join an international organisation unless both Turkey and Greece were members.

SUMMARY OF THE OPINION OF PROFESSOR M. H. MENDELSON, QC, ON THE APPLICATION OF THE ‘REPUBLIC OF CYPRUS’

TO JOIN THE EUROPEAN UNION

After World War II, the British Government was in favour of giving independence to the colony of Cyprus. However, there was a strong movement within the Greek Cypriot community favouring unification with Greece (enosis), which greatly alarmed the Turkish Cypriots. Eventually, in 1959 the Greek and Turkish Prime Ministers reached an agreement in Zurich which laid the foundations for a solution. They agreed on a Basic Structure, which was to form the basis of the constitution of an independent Republic of Cyprus, a draft Treaty of Guarantee between the Republic of Cyprus, Greece, Turkey and the UK, and a draft Treaty of Alliance between the first three states. The two communities in Cyprus accepted this formula. At a meeting held at the Foreign Office on 12 February 1959, the Foreign Ministers of Greece and Turkey and the Foreign Secretary sought clarification of various matters, also insisted—and his counterparts agreed—that the UK would be entitled to retain military bases on the island, and that this would be guaranteed, not just by the Republic, but also by the two other states. All parties, including representatives of the two communities endorsed this package (with some elaboration), and a commission was set up to elaborate a Constitution. This contained certain unamendable Basic Articles designed, in particular, to maintain the carefully engineered system of

checks and balances which, amongst other things, entrenched the equal partnership rights of the Turkish community. On 16 August 1960 the Republic of Cyprus became independent, the Treaties of Guarantee, Alliance and Establishment being signed at the same time. The cornerstone of the settlement in Cyprus was and remains the Treaty of Guarantee, which, with its related instruments, was designed to secure the independence of the island, balance the interests of the two communities and also those of the two states with which those communities have ethnic ties, and—last but not least—to be a legal foundation for the UK’s retention of its sovereign bases and other facilities.

The Opinion considers whether there are any convincing grounds for impugning either the initial validity or the continuance in force of the relevant provisions of the Treaty, and concludes that there are not. The Guarantors—the United Kingdom, Turkey and, it seems, Greece—indeed continue to recognise its validity, which is also the position of the UN Security Council. Indeed, it would be difficult for these states not to accept the continuing validity of the Treaty, which provides the justification for their involvement in the affairs of Cyprus and, in the case of the UK, its retention of the sovereign base areas.

Turning to the substance, by Article I(2) of the Treaty of Guarantee, the Republic of Cyprus undertook “not to participate, in whole or in part, in any political or economic union with any State whatsoever”. Membership of the EU would constitute participation in whole or in part in an economic union, and at least in part in a political union. The conclusion must be, therefore, that this would be contrary to the Treaty. To try and escape this conclusion by arguing that the Treaty prohibits union only with a state, not states in the plural, would not only do violence to the ordinary meaning of the words, their context and their object and purpose, it would also run counter to the express intentions of the governments who drafted this provision. For, as the Opinion shows, they specifically considered membership of international economic and political organisations in the context of this provision of the Treaty. By definition, such organisations would comprise other states, in the plural. The drafters were only prepared to relax this ban if the organisation was one in which both Greece and Turkey participated but such is not the case with the EU. Furthermore, Article I(2) goes on to prohibit, not just participation (in whole or in part) in an economic or political union, but even “all activity likely to promote, directly or indirectly ... union with any other state ...” It cannot be gainsaid that membership of Cyprus in the EU is likely to promote, directly or indirectly, union with other states, and most particularly with Greece.

Nor was this the only undertaking of Cyprus. By paragraph (1) of the same Article it also “undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution”. And the Constitution thus guaranteed included other provisions directly in point. Article 170 guaranteed most-favoured-nation treatment to each of the Guarantors whereas, manifestly, if Cyprus became a member of the EU, Greece and the UK would have necessarily to receive more favoured treatment than Turkey. Moreover, Article 50 of the Constitution expressly gave the Turkish Vice-president, as the representative of his community, a veto over Cyprus’s membership in any international organisation unless both Greece and Turkey were members. These were amongst the select group of unamendable Basic Articles in the Constitution that the Republic of Cyprus undertook in the Treaty of Guarantee to respect. For all the above reasons it seems clear that Nicosia would violate its treaty obligations by seeking or accepting membership in the EU.

For their part, the Guarantor States also undertook important legal obligations. By Article II(1) of the same Treaty, these three states took “note of the undertakings of the Republic of Cyprus in Article I” and “recognise[d] and guarantee[d]”, inter alia, the state of affairs established by the Basic Articles of the Constitution. Furthermore, in paragraph (2), reflecting the corresponding undertaking by the Republic of Cyprus in Article I(2), they “likewise undertook to prohibit, so far as concerns them, any activity aimed at promoting, directly or indirectly, ... union of Cyprus with any other State ...” Admittedly, this guarantee is not completely unqualified: it extends only “so far as concerns them” or, as the original version had it, “so far as lies within their power”. But it certainly does lie within the power of the UK (and, indeed, of Greece) to prevent a violation of the Treaty by the simple exercise of their veto.

Furthermore, given that at least de facto the writ of Nicosia does not run throughout Cyprus, if that country were to join the EU there would be considerable practical and legal obstacles in the way of Nicosia's implementation of duties that would have to be undertaken towards other members in respect of the island as a whole. For their part, the other members would find it extremely difficult, if not impossible, to carry out their legal obligations in respect of Cyprus as a whole. As the Opinion shows, the EU Commission and Court, as well as the UK Government, have frankly recognised these difficulties, but the Commission failed to draw the appropriate conclusions when it declared Nicosia's application (on behalf of the whole island) admissible.

The undertakings of the Republic of Cyprus and of the three Guarantor States are not mere political statements. They are solemn legal promises embodied in a formal treaty. And what this particular treaty gives is a guarantee, the most solemn form of pledge known to law. All four of the states concerned obtained benefits under the Treaty of Guarantee, but with these benefits came obligations. International law, by which the United Kingdom and other members of the EU set great store, demands that these obligations be performed.