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Van Coufoudakis on the Annan Plan

“Does the international community really wish to establish a precedent under which a minority may eventually acquire equal status, equal rights and its own ‘constituent state’ as a consequence of an invasion carried out in breach of international law?”

Klearchos Kyriakides on the Annan Plan

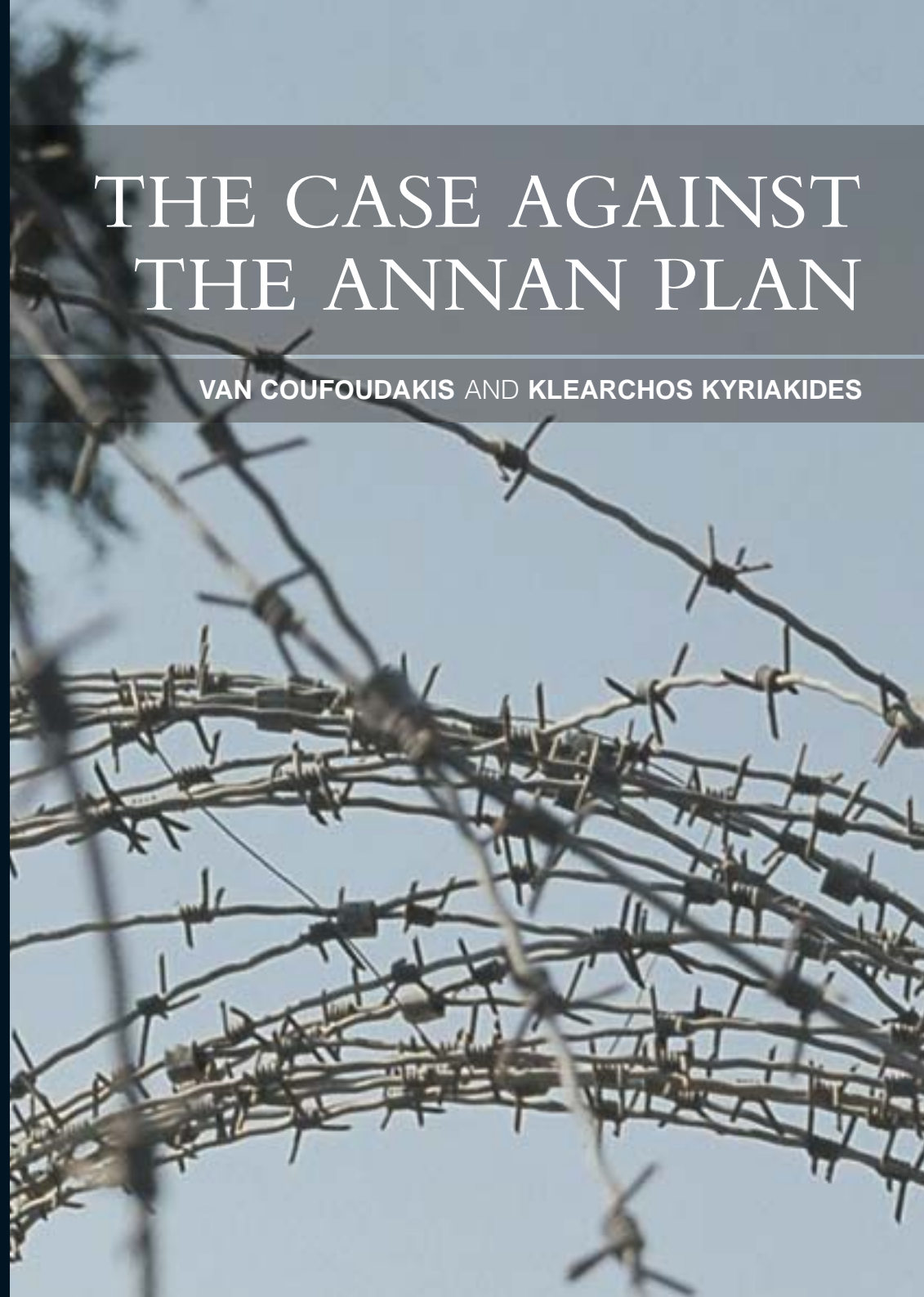
“Having read the final version of the Annan Plan published on 31 March 2004, I am more convinced than ever that the Greek Cypriot people must say “No” in the forthcoming referendum. Lobby for Cyprus is campaigning *against* the plan and *for* the principles of democracy, human rights and international law.”

Kyriacos Christodoulou on the Annan Plan



THE CASE AGAINST THE ANNAN PLAN

VAN COUFOUDAKIS AND KLEARCHOS KYRIAKIDES



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Introduction

Vassilis K Fouskas¹

Lobby for Cyprus, a London-based refugee organisation, deserves more attention and credit than is currently given to it by the media, the policy-making community and other important institutions in the United Kingdom and abroad. Apart from being the voice of Cypriot refugees in the United Kingdom, that is of persons deprived of their land and properties since Turkey's two consecutive advances on Cyprus's territory in summer 1974, *Lobby* is a democratic organisation promoting politically and historically informed debates on the Cyprus issue. Well-embedded in the Cypriot community in London, *Lobby* has dared, and massively succeeded, in organising a plethora of seminars, conferences and other events with reference to Cyprus and the international relations of the Eastern Mediterranean. These events are of great importance to the foreign policy establishments in London, Brussels and Washington. This is not only because of the highly regarded speakers and personalities invited to those events. Most importantly, this is because of the relevance of the issues raised and the international and political contacts established during those events.

Such an event was held on 18 March 2004, where two scholars, Professor Emeritus Van Coufoudakis and Dr Klearchos Kyriakides, presented to the Cypriot community in north London their case *against* the "Annan Plan".² This plan is the latest blueprint for a solution to the Cyprus issue, first presented by Kofi Annan, UN Secretary General on 11 November 2002, amended four times since then and currently under negotiation between President of the Republic of Cyprus Tassos Papadopoulos, Turkish Cypriot leaders and Greek and Turkish diplomats. On 24 April the Cypriot people have been asked to express their verdict on the plan through two separate referenda. Professor Coufoudakis, an accomplished and distinguished intellectual and long-serving member of

the academic profession in the US and Europe, and Dr Kyriakides, a young promising scholar and lawyer, make a strong case against the plan and call for its rejection in the referendum.

Both authors cannot avoid the temptation to draw parallels with the 1959-60 London-Zurich agreements, both in terms of procedure and substance. The hastiness by which the 13 February 2004, New York formula indicated to all parties concerned to subscribe to the “Annan Plan” betrays an authoritarian political behaviour and an imposition by foreign agents of an unjust settlement, similar to that experienced by Archbishop Makarios at Lancaster House in February 1959. How is it possible, both writers wonder, to demand adoption of such a complicated document, and ask people to express their opinion on it in a “black and white” fashion, that is through separate referenda held at such short notice? The “Annan Plan” is one of the most complicated constitutional documents ever drafted and requires an educational and unbiased campaign on behalf of all political agents concerned, and on the part of the UN in particular. Such a campaign would give an opportunity to all Cypriots to acquire substantial information about the plan and give them a chance to read it before voting in favour of or against it. But the hastiness can be explained by the actual contents of the plan.

Professor Coufoudakis argues that the aim of the plan is to establish a loose confederal two-state structure on the island and, for this to occur, the Republic of Cyprus has to be dissolved. “There is no hierarchy among the laws of the central government and of the component states”, Professor Coufoudakis asserts and, in fact, “all central authority emanates from the component states”. Moreover, whereas all citizens of the new EU after 1 May will have the right to move freely to Cyprus and acquire property in whatever part of the island they wish, the Greek Cypriots will be subject to restrictions. Economically, the plan puts the burden squarely on the Greek Cypriots. Besides, as Dr Kyriakides reminds us, the Treaties of Alliance, Establishment and Guarantee are not only kept alive, but they are enhanced, offering additional advantage to Turkey, a non-EU state, including rights of intervention in EU territory. This turns the perpetrator (Turkey) into the beneficiary and the victims (the Greek Cypriots) into second class citizens, as fundamental human rights and the *acquis communautaire* of the EU are undermined by the plan itself. Most important of all, the plan is

cumbersome and dysfunctional and it is highly likely to create tension and conflict in the future. These are the main reasons that, according to the authors, justify the plan’s rejection.

The concrete analysis of Dr Kyriakides reaches similar conclusions. He also raises some interesting questions of which I would highlight only one: “Does the international community” Dr Kyriakides asks, “really wish to establish a precedent under which a minority may eventually acquire equal status, equal rights and even its own ‘constituent state’ as a consequence of an invasion carried out in breach of international law? If so, why?”. This is a rather interesting question. Look at the cases of former Yugoslavia, Iraq and Afghanistan. But look also at the “inappropriate” – from the point of view of American interests – case of Palestine and Turkey. A question that follows up that formulated by Dr Kyriakides could read as follows: “Would Turkey or, for that matter, Israel, be willing to implement as part of their EU commitments in the future an arrangement similar to that of Annan in Cyprus with respect to their Kurdish and Arab minorities?” That is a tough nut to crack.

Undeniably, the evening of 18 March was far richer than any form of written presentation. Dozens of people participated in the debate and asked questions and the youth, mostly informed students belonging to the group “ISXYS” – a student society which helped with the organisation of the event – was present *en masse*. Moreover, major Cypriot newspapers were present, as well as members of the London-based business community. However, the texts are published here in the hope of reaching out to those who, for one reason or another, were unable to be present. Yet *Lobby* has opted to publish them for an additional reason: to persuade as many Greek Cypriots as possible to vote “No” in the forthcoming referendum. A slender majority against the plan may not be sufficient to protect the future democratic cause of Cypriots. Consequently, *Lobby* is striving to ensure that well in excess of 55 per cent vote “No”. *Lobby*’s co-ordinator, Kyriacos Christodoulou, who moderated the seminar on 18 March, has confessed to me that *Lobby* is campaigning for an overwhelming rejection of the plan by the Greek Cypriot people. “The Greek Cypriots do not have any incentive to support the plan as it is so heavily biased towards the Turkish side and does not reverse the injustices committed against the Cypriot people, in particular the Greek Cypriot refugees who were evicted from their

homes by the Turkish invading army”. Moreover, Mr Christodoulou argues that the plan has so many ambiguous aspects that they can be interpreted in favour of outside powers.

The events of November 2002 to March 2003, in relation to Iraq, may have been more favourable to Greece and the Republic of Cyprus than to Turkey. This is because Turkey had flatly refused to bow to the demands of the United States administration *vis-à-vis* the conflict in Iraq. Now, however, Turkey has allowed the rotation of more than 100,000 US troops through its territory to support the US-led operation in Iraq. This may impact severely on Cyprus’s own interests. “It is Cyprus that foots the bill all the time”, Mr Christodoulou concludes, “because it is used as a bargaining chip by all foreign agents on the altar of their own national interests”.

Lobby is a non-party-political organisation that does not adhere to any party political line in Cyprus or elsewhere. Nevertheless, as a democratic organisation supporting the dispossessed, *Lobby* is ideally placed to help the voters of Cyprus reach an informed and considered decision irrespective of the official line of the parties. According to Mr Christodoulou, an overwhelming rejection of the “Annan Plan” in the referendum would convince the international decision-makers that the Greek Cypriots are unlikely to endorse similar plans in the future, let alone now that the Republic has guaranteed its accession to the EU on 1 May. Professor Coufoudakis also asserts, if there is a “No” vote, “after 1 May the Republic can re-start negotiations within the perimeter of rules set by the EU, that is the *acquis communautaire*”.

My introductory note here would be incomplete without a few words about Professor Van Coufoudakis and Dr Klearchos Kyriakides. I consider the former to be our foremost teacher on the Cyprus issue and US policy in the Eastern Mediterranean and the Middle East. His classic piece “US foreign policy and the Cyprus question: an interpretation”, published in the journal *Millennium* in 1976-77 (v.5, n.3) is compulsory reading for my MSc students. Current scholarly research on the Cyprus issue has reinforced, rather than thwarted, the conclusions and analyses offered by Professor Coufoudakis nearly thirty years ago. But Professor Coufoudakis has had an outstanding career by all standards. He studied at the Universities of Michigan and the American University of Beirut.

He holds the rank of Professor Emeritus in Political Science at Indiana-Purdue University at Fort Wayne and from 1986 to 1995 he served as assistant, and then as Associate Vice Chancellor for Academic Affairs. From 1981 to 1987, Professor Coufoudakis served as Director of the Indiana University Centre for Global Studies. He is the author and editor of many books and has contributed dozens of informed articles in refereed journals, many of which have appeared in languages other than English. He has lectured in major Universities in the US, Britain, Greece and institutions such as the Foreign Service Institute (Washington DC), the NATO Defence College (Rome, Italy), the Canadian Institute for International Peace and Security (Ottawa) and the Istituto Affari Internazionali (Rome). In September 1995, Professor Coufoudakis established the Foundation for Hellenic Studies, a foundation dedicated to the promotion and support of the study of Greece and Cyprus in the United States. He is a member of the AHEPA Educational Foundation. In 1984 he was honoured Honorary Consul of the Republic of Cyprus for the State of Indiana. On 25 March 1998, the President of Greece awarded him the decoration and title of Commander of the Order of the Phoenix for his contributions to the study of Greece. On 15 May 2002, Indiana University awarded him the Degree of Doctor of Humane Letters, Honoris Causa. On 26 April 2002, the Governor of the State of Indiana presented him the “Sagamore of the Wabash” Award. At present, Professor Coufoudakis is Rector of Intercollege, Nicosia.

Dr Klearchos Kyriakides, whom I first met in Nicosia during an international conference back in December 2002, is a practising solicitor based in London. He is also a Lecturer at the School of Law at the University of Hertfordshire. He holds an LLB (Law and Politics) Degree from the University of Birmingham together with MPhil and PhD Degrees in International Relations from the University of Cambridge. His main research interests relate to the origins of the United Kingdom Sovereign Base Areas in Cyprus and the advisory functions of the Attorney-General of England and Wales. He subjects the “Annan Plan” to close scrutiny, tracing its origins and objectives. In many ways, he represents the best of a new and promising young generation of scholars dedicated to the study of Cyprus and international politics.

The case against the Annan Plan

Van Coufoudakis

I would like to thank the organizing committee for its invitation and hospitality. In view of the events that have transpired since the 4 February “ultimatum” invitation for talks in New York, and the fact that another 1959 Zurich/London style conference is in the offing, this meeting is not only timely, but necessary. The Cyprus problem has not been solved. The most difficult choices are ahead of us.

I am not of Cypriot origin and I do not belong to any political parties in Greece or in Cyprus. I am a person that devoted a big part of his academic and political life to the survival of the Republic of Cyprus and to the protection of the rights of all its citizens, whether Greek or Turkish Cypriot. I have advocated from the very first the need for a peaceful, functional, viable solution of the Cyprus problem, one that is based on the UN Security Council resolutions, the *acquis communautaire*, and the decisions of European and American courts. In good conscience, I cannot support the 13 February New York formula, the procedures it entails, and the outcome that will be based on the Secretary General’s binding arbitration under his third or possibly his fourth revised plan.

I am one of the few people that have read, cover to cover, all three versions of the Annan Plan. My opposition to the plan is based on both procedural and substantive grounds.

Procedural objections

Let me turn to my procedural objections first.

1) *Once more, we have the repetition of deadlines amounting to an ultimatum for the acceptance of Annan’s plan.* This also happened in the talks in Copenhagen (2002) and at The Hague (2003), even though the plan was incomplete in many areas, as in the case of the economic cost

of reunification, security issues and laws pertaining to the central government and the component states.

2) *We are witnessing pressures on the newly elected government of Greece to participate in a 1959 style Zurich/London conference.* Similar pressures were exerted on the newly elected president of the Republic of Cyprus in 2003 prior to The Hague meeting, before he was even sworn to office. I raise this procedural point because President Clinton suspended all Middle East initiatives in October 2000 during the final stage of the American presidential campaign. All Cyprus initiatives were also suspended during Turkey's last parliamentary elections.

3) *The insistence on holding popular referenda on a most complex constitutional, legal, social and economic document currently stretching over 450 pages or so.* Even legal experts disagree on many of the provisions of the Annan Plan due to their deliberate ambiguity. Kofi Annan and Tom Weston (US Special Co-ordinator on Cyprus) do not want to give time for an in-depth discussion of the plan, when it is completed, because they know that it will expose its many problems. Instead, we hear a combination of threats and financial promises amounting to bribes to convince Cypriots to vote in favour of this plan. In this manner, they plan to legalise Annan's binding arbitration and the so-called "realities" created by Turkey's 1974 invasion.

4) *The changing role of the Secretary General from offering "good offices" to "binding arbitration".* These are two very different legal and political procedures with very different outcomes. This has happened without any authorisation from the Security Council.

5) *There is no legal recourse available in any Court against this plan by any citizen of the Republic of Cyprus who believes that the plan violates his/her rights.* This, in itself, is a fundamental violation of human rights.

6) *The involvement of Greece and Turkey on issues other than those relating to security.* I want to remind the government of Greece that this is not 1959 in Zurich and London. The new Greek Prime Minister cannot repeat what his uncle did to Cyprus in 1959, and what he could not for Cyprus in 1974. Costas Caramanlis has his reputation and his place in Greek history to protect.

Substantive objections

Let me now turn to some of my substantive objections.

1) *The United States, Kofi Annan and Turkey demand that the Cyprus issue be resolved before the accession of Cyprus to the EU in order to secure derogations, especially in the case of the three freedoms, that are incompatible with European law.* They are also demanding that the EU accommodate all derogations, especially those relating to the three freedoms, even though such derogations may violate European Court decisions, European law and UN Security Council resolutions. Protocol 10 of the accession of Cyprus to the EU states that while the EU is ready to accommodate the terms of a Cyprus settlement, such a settlement must be "in line with the principles on which the EU is founded". These derogations are not in conformity with EU principles. Romano Prodi (President of the European Commission) and Günter Verheugen (EU Enlargement Commissioner) have repeatedly and recently indicated that any derogations that may be part of a settlement, must be for only a short period of time and must not violate European law.

2) *The plan dissolves the Republic of Cyprus as constituted in 1960 and replaces it with a loose confederation of two largely autonomous states with a new flag and a new national anthem.* The attempt to destroy the Republic of Cyprus is not new. This was the objective of the 1964 Acheson Plan. This has also been Turkey's objective since 1963. Turkey, since 1963, has refused to recognise the existence of the Republic of Cyprus and its government. The Republic of Cyprus, in turn, faced these challenges in the spring of 1964, in 1974 following Turkey's invasion and in 1983, following the Turkish Cypriot unilateral declaration of independence. Whether at the bilateral or the multilateral level, the Republic of Cyprus, as created in 1960, remains the legal and political entity recognised by all members of the international community with the exception Turkey. This is also the Republic that signed the Treaty of Accession to the EU on 16 April, 2003. All this could come to an end the day after the referendum. This is why Turkey demands a new agreement between the EU and the state Annan proposes to create.

3) *The proposed constitutional system is that of a loose confederation of two largely autonomous states.* There is no hierarchy among the laws of the central government and of the component states, as is the case in federal systems, while all central authority emanates from the component states. And now, Turkey and Mr Denktash demand that the

Turkish Cypriot component state play a determining role on all EU and foreign policy related matters.

4) *The proposed system is dysfunctional, given the apparent veto powers granted to the Turkish Cypriots and the fact that disputes will be resolved by non-Cypriots, as in the case of the Supreme Court and the Central Bank.*

5) *Annan's legal advisor Didier Pfirter, who admitted that he did not realise the importance Cypriots attach to their property, has borrowed selective paragraphs from the Swiss and the Belgian constitutions.* However, he has not introduced any provisions from real federal models such as that of the United States. A constitution reflects the historical, political, economic and social conditions and experiences of particular people and is not based on the convenient selection of constitutional references justifying Annan's and Washington's political vision.

6) *The economic cost of the proposed solution.* I want to remind you that none of the three versions of the Annan Plan, that Cypriots were urged to accept since November 2002, considered its drastic economic consequences. It is only now that the government of Cyprus has raised this issue that Annan is examining it! The cost of adjustment is conservatively estimated between 20-40 billion Euros. There are at least three aspects of the economics of reunification: (a) compensation for properties that will not be returned to their legitimate owners and compensation to settlers who may wish to return to Turkey. (b) the reconstruction of cities like Famagusta, and (c) the monetary policy and its implementation at the central and the component state levels. In addition, there are the requirements of EU convergence policy. Turkey, the country that invaded and still occupies 38 per cent of Cyprus, is not held responsible for any of these costs. Only the Greek Cypriots, the victims of Turkey's aggression, are held liable for Turkey's actions. We have heard promises of funding from the EU and from the US in support of a financially costly solution. I remind you of the promises given by the same donors to far worse cases as in Bosnia, Kosovo and Afghanistan, and what was actually delivered to them. You will understand then, why the financial burden will fall on the Greek Cypriot taxpayers and what risks are facing the economy of Cyprus. Two more points relating to the economic cost of the solution: Despite the low per capita income in the occupied areas (estimated at about

\$3500-\$3700), this figure is well above the poverty level utilised by various international organisations for assistance purposes. As for the promises of significant American commitments, Tom Weston failed to talk about the authorisation/appropriation cycle in Congress which is not under the president's control, and the negative attitude on the part of Congress on foreign aid issues. In view of the costs of the war in Iraq, the Congress is not likely to be enthusiastic on major aid to Cyprus. The Greek-American lobby for years had to fight major legislative battles to secure the symbolic assistance of \$15 million for aid to Cyprus. This amount is small change in the US federal budget.

7) *Most of the 90,000 settlers will remain and be legalised in the Turkish Cypriot component state.* The citizenship issue and the control of immigration will be a serious problem for Cyprus in the EU, especially because Cyprus, under the proposed settlement will not meet the Schengen criteria.

8) *The security issue.* This explosive issue has at least three dimensions: (a) the demilitarisation of Cyprus and the disbanding of the National Guard; (b) the gradual reduction of the Turkish troops to 6,000 men. These troops will enjoy expanded intervention rights in all of Cyprus and will be supported from heavily armed Turkish bases some 40 miles to the north of the Republic; (c) the exclusion of Cyprus from the common European defence policy. Cyprus will be the only EU member under foreign guarantee and with troops from a non-EU country on its soil enjoying intervention rights.

9) *Even though Turkey does not recognise the Republic of Cyprus and still occupies 38 per cent of its territory, Cyprus, under the Annan Plan is obligated to support Turkey's EU membership whether it satisfies the Copenhagen criteria or not.*

10) *The complex issue of property compensation and exchange through a system of deferred payments and bonds.* The Annan plan nullifies decisions of the European Court of Human Rights, ends other cases pending in front of the court, and violates personal property rights guaranteed under the European Convention on Human Rights. Advocates of the Annan Plan justify these provisions under the theory of "eminent domain". But this argument is nullified by the collective enforcement of its provisions on a whole class of citizens and by the fact that other EU nationals will enjoy property rights in Cyprus not available to Cypriots!

11) *And finally, the humanitarian issues of the enclaved and the missing.* While the enclaved are left to their fate under Turkish Cypriot administration in the third Annan Plan, the missing are also relegated to the sad pages of history that the Cypriots are asked to forget. Instead, a “truth and reconciliation committee” will try to re-write the history of the last 50 years and play a guilt trip on the Greek Cypriots.

Relationship of this plan to the EU

Let me also comment on the relationship of this plan to the EU. The Republic of Cyprus concluded an association agreement with the EEC in 1972; it applied for EEC membership in 1990, and the accession negotiations were concluded with the Treaty of Accession signed in Athens on 16 April 2003. I must also emphasise that the Treaty of Accession refers to the Republic of Cyprus as established by the independence agreements concluded with Great Britain in 1960. The accession of the Republic of Cyprus and of the other 9 members was ratified by all current EU members, including the United Kingdom. It appears that Foreign Secretary Jack Straw forgot this legal and political reality in the recent statements he made in Turkey on the consequences of a “no” vote in the referenda on the Annan Plan.

After 1 May 2004, Cyprus will be in the strongest negotiating position since 1974. This does not mean that Cyprus will attempt to use the EU as a weapon against Turkey, or that the EU will be another means of internationalising the Cyprus problem. It only means that after 1 May, the application of EU laws and regulations will protect more effectively the rights of all Cypriots.

According to EU rules, member states must speak with one voice and implement European laws and regulations in all their domain. Looking at the decision making process in the legislative and executive branches under the Annan Plan, this will be neither easy nor feasible in Cyprus.

Another EU principle is the free movement of persons, commerce, services and capital among and within EU members. This will not be possible throughout Cyprus for Cypriots. It is ironic that, as of 1 May, Cypriots will be able to travel, reside, work and invest in all EU countries except in their own country. Meanwhile other EU nationals will enjoy these rights in Cyprus. This fundamental human rights issue cannot be swept under the rug. In fairness, I must acknowledge the

existence of derogations in the EU in the case of the Aland Islands and the Austrian-Italian Bolzno border areas. These derogations were the result of pre-existing agreements prior to the creation of the EEC and prior to the entry of these states in the EEC. Cyprus does not fit this model. The reality of the Annan Plan is that it creates a subordinate, dependent, dysfunctional confederation with external guarantors and second class citizens in the EU of the 21st century. This is unprecedented and, I am sure, that neither Annan nor Tom Weston would choose to live under the system they are attempting to impose on Cyprus.

The demise of the Republic of Cyprus?

After 43 years of independence we may be witnessing the demise of the Republic of Cyprus. This is the result of a policy of concessions that guided the negotiating positions of successive Cypriot and Greek governments. Even though Turkey and Denktash, consistently since 1974, changed the bases for the talks, no Cypriot government had the courage to demand talks from a zero base in order not to be accused of intransigence. In contrast, Turkey, consistently articulated its demands, even if this required changing the terms of reference for these talks. This has been repeatedly recognised by the Secretary General. In April 1998, he noted that Turkey’s positions included: a solution reflecting the so-called “realities” created in Cyprus after 1974; the recognition of Denktash’ pseudo-state; the continued presence of Turkish troops and guarantees; the sovereignty of the so-called “TRNC”; property exchange and compensation; limited territorial adjustments; good neighbour relations among the two Cypriot states; the lifting of the economic embargo; and the opposition to the accession of Cyprus to the EU without the accession of Turkey. Even though Turkey may not be prepared to admit this in public, most of the aforementioned goals have been met under the third Annan Plan.

Where do we go from here? We have heard many threats emanating from Washington and London in case the Greek Cypriots reject this plan in the proposed referendum. Isn’t it ironic that while the referendum is promoted as the free expression of the two communities on the Annan Plan, free citizens of an independent state are threatened with “terrible consequences” if they do not vote according to the wishes of London and Washington? This, alone, is a good reason for a

resounding “No” in the referendum. Cyprus will become a member of the EU with or without a solution on 1 May. There will be problems with or without a solution under the Annan Plan. I would support a “no solution” prior to 1 May, if the choice is between a no solution and a bad solution such as the one promoted by Annan, Washington, and London.

We have been told that a failure to approve this plan in a referendum would be a major set back for the “progressive” forces in the occupied areas. The opponents of Rauf Denktash support the Annan Plan and the reunification of Cyprus under it, because it maintains the so-called “TRNC”, it weakens Denktash’ power, and will improve the economic conditions in the occupied areas. None of the major opposition leaders in the occupied areas is committed to rejoining the Republic of Cyprus. Thus, the implementation of the Annan Plan will leave the Turkish Cypriots masters in their own “state” and grant them veto powers in the free areas of Cyprus.

Why is Washington so passionately in favour of the Annan Plan?

Why is Washington so passionately in favour of the Annan Plan and of the procedure agreed upon in New York on 13 February? President Bush badly wants a solution of the Cyprus problem on the eve of the American presidential elections. Such a solution (1) would contribute to the stability of a volatile region and would remove an irritant in the relations of Washington, Athens and Ankara; (2) a solution would be presented as the result of the Bush administration’s decisive foreign policy; (3) by resolving a European problem with the participation of the UN, Bush would improve his image at the UN and in Europe in the aftermath of the Iraq war; (4) a solution would strengthen Turkey’s European vocation and would help limit the influence of extreme fundamentalists and nationalists in Turkey; (5) a solution would advance Turkey’s image as a paradigm of regional stability, democratisation and social change; (6) cooperation between the US and Turkey would show that Washington is looking to the future and not to the past, i.e. the recent troubles over Iraq; and (7) a Cyprus solution could be presented as a model to other areas facing ethnic division, as in the case of Kosovo, Afghanistan and Iraq.

To achieve these dangerous and elusive goals, Washington has resorted to a combination of threats and promises of financial assistance

to calm Cypriot anxieties. Washington’s threat rhetoric includes the danger that the occupied areas may be recognised by some state; that Cyprus may be partitioned after 1 May; that Turkey will be alienated from the West and from Europe in particular, and that such alienation will weaken the coalition against terrorism. The threat of “weakening the coalition against terrorism” is Washington’s latest rationalisation for all its foreign policy demands.

The support extended to Erdogan by Washington does not mean that it has abandoned its traditional ties to the Turkish military. While it is argued that the military provide assurance of stability in Turkey, Erdogan serves broader political goals in the region. Turkish-American cooperation has also achieved another elusive goal: linkage of the resolution of the Cyprus issue to Turkey’s European ambitions. The EU has opposed this linkage. The United States and Turkey, working through the Annan Plan, have managed to link Turkey’s “flexibility” in the talks with the granting of a date for the opening of accession talks with the EU. They have even made the issue of the return of Greek Cypriots to the occupied areas and the reduction of Turkish forces in Cyprus contingent on Turkey’s progress in its accession process to the EU.

Concluding thoughts

Let me close with few words of advice and encouragement. Continue your mobilisation against the Annan Plan and urge your friends and relatives to do the same and to vote “No”, if the proposed referendum. This is not a partisan issue. We are not here to attack any Cypriot political leader. Your clear and reasoned criticism strengthens the president’s negotiating position, and may even convince Annan not to push for a referendum that is likely to fail. Do not allow yourselves to be divided by promises of financial gain; by pitting those who may return to some liberated areas against those who may not. Do not allow outsiders to divide you politically. Demand of your leaders to stand tall at this moment of challenge! Do not be afraid of empty threats because Annan Plan supporters claim that Cyprus is a small country. Cyprus may be small but, it is a proud country that will not entrust the future of its children to outside arbitration.

Stay united! Together we can win the fight to protect the Republic of Cyprus and the rights of all its citizens, Greek and Turkish Cypriots

alike. We have done this before in the critical days of 1963-64, in 1974, and in 1983. We can do it again. The unity and survival of Cypriot Hellenism is now at stake.

Legitimising the illegitimate?

The origins and objectives of the Annan Plan

Klearchos A Kyriakides¹

In the forthcoming referendum on the Annan Plan, the people of Cyprus are facing a stark choice. They can vote in favour of the Plan, thereby complying with the requirements of external actors or they can vote against and pay the perceived political penalties for doing so. As they face a difficult decision, they would do well to recall the past, absorb the lessons of history and appreciate the irreversible legal consequences which will arise if they vote in favour of the Plan.

The origins of the Cyprus question

Aristotle advised that to understand anything, you have to observe its genesis and its development. The origins of the Cyprus question can be traced back to 1878, the year in which Cyprus fell into British hands, albeit under continuing Ottoman suzerainty. Then, in 1914, upon the outbreak of the Great War during which the Turks sided with the Axis Powers, the British annexed Cyprus, thereby transforming it into a colony under exclusive British sovereignty. Thereafter, under the Treaty of Lausanne 1923, Turkey renounced “all rights and title whatsoever over or respecting the territories situated outside its frontiers” and “recognised” the British annexation. During the Second World War, Greece and the Greek Cypriots supported the Allies in contrast to neutral Turkey. In the aftermath of the War, the Greek Cypriots called for self-determination through the incorporation of the island into Greece. Bearing in mind their support for the Allies and the fact that they constituted 78 per cent of the population of Cyprus, the Greek Cypriots believed that they were entitled to self-determination. However, after four years of troubles during the late 1950s, an American-driven international consensus emerged during the winter of 1958-59. The then American Administration under President Dwight

Eisenhower, which emphatically opposed partition, supported the concept of “guaranteed independence”. Under this formula, neither self-determination nor partition would be applied to Cyprus. Instead, a unitary, nominally independent Republic of Cyprus would come into being with its independence, territorial integrity and security guaranteed by the United Kingdom, Greece and Turkey.

The lessons of Lancaster House

The concept of “guaranteed independence” formed the basis of the Zürich Accord, which was cobbled together and agreed by the governments of Greece and Turkey on 11 February 1959. On the same day, the Greek and Turkish foreign ministers flew to London to obtain British support for their Accord. The United Kingdom proceeded to give its blessing, subject to the addition of various amendments in its favour, which were accepted. After years of diplomatic disharmony, Greece, Turkey and the United Kingdom were now at one. A conference was subsequently convened at Lancaster House in London and its proceedings began on 17 February 1959, just a day or so after the finishing touches had been added to the draft London Agreement.

The Lancaster House Conference was not supposed to last for more than a couple of days. Indeed, it was intended to be a ceremonial event with one simple objective: to conclude – i.e. not negotiate – the London Agreement. Why was there such a rush back in February 1959? And why is there such a rush today? The question brings to mind the immortal words of Albert Einstein, who believed that “the distinction between past, present and future is only an illusion, however persistent”!

Notwithstanding the fact that the draft London Agreement was presented to them as a *fait accompli*, the two Cypriot leaders were far from united. On 18 February 1959, that is to say on the second day of the Lancaster House Conference, Dr Küçük confirmed that he accepted the draft Agreement “in full”; for his part, Archbishop Makarios demurred. The Archbishop accepted the draft as “a good basis towards the final solution”, but he expressed “reservations” about certain aspects of a document which he had only just read. In particular, the Archbishop noted that although the Turkish Cypriots constituted just 18 per cent of the population, they were to be given 30 per cent of the places in the civil service. He sought clarification as to the extent

of the veto to be vested in the office of the Vice-President, which was to be held by a Turkish Cypriot. He cast doubt on the proposed Treaty of Guarantee under which, as he put it, “any of the three guarantor powers could take separate action [by] intervening in the internal affairs of Cyprus”.²

In response, the Foreign Secretaries of Greece, Turkey and the United Kingdom spoke with one voice. According to the declassified transcript of the Lancaster House Conference, Mr Selwyn Lloyd MP, the British Foreign Secretary, declared:

May I explain to you, Archbishop, what we mean by a foundation? A foundation is something upon which you can build, but if you take away something from it the whole structure falls down... We are not asking you to accept this without the change of a single word. There may be matters of detail to be discussed, to be worked out; there may have to be additions to the structure. But what we want to know... is whether you accept this in essence as the foundation of the final settlement – in essence.³

The Archbishop was cornered. He could have accepted the draft Agreement as “a foundation” or he could have rejected it and faced the consequences which, he was allegedly advised, might have been dire. After initially digging his heels in, Archbishop Makarios suddenly changed his mind. By the following morning, 19 February 1959, he had capitulated. No more than 48 hours or so after the Archbishop had first cast his eyes over the draft Agreement, he signed.

For so many reasons, the events of February 1959 provide a salutary lesson as to the risks involved in putting your signature to any document under pressure to do so, before you have fully considered its contents, before you have had time to assess their implications and before you have obtained expert legal advice. A.J.P. Taylor, that brilliant scholar who held a Professorship in History at the University of Oxford, believed that “human blunders usually do more to shape history than human wickedness.” Cyprus, which has experienced as many blunders as acts of wickedness during its long and troubled history, continues to live with the consequences of a decision which, in retrospect, was a grave human blunder.

The upshot of the Lancaster House Conference was the end of British rule in Nicosia. On 16 August 1960, the unitary Republic of Cyprus came into being, two Sovereign Base Areas were retained by the United Kingdom and the Cyprus settlement was underpinned by three treaties: the Treaty of Establishment 1960, the Treaty of Guarantee 1960 and the Treaty of Alliance 1960. The circumstances under which the Republic of Cyprus became independent were not only extraordinary. They were – and remain – unprecedented in the history of British decolonisation and, indeed, of post-1945 international relations. The Treaty of Guarantee 1960 – under which Greece, Turkey and the United Kingdom undertake to “recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus” whilst at the same time “reserving the right to take action” if certain circumstances arise – is unique. The rights accorded to Greece – under the Treaty of Guarantee and the Treaty of Alliance 1960 – are unique. The rights accorded to Turkey – under the Treaty of Guarantee and the Treaty of Alliance – are unique. The rights accorded to the United Kingdom – under the Treaty of Guarantee as well as under the Treaty of Establishment 1960 pursuant to which the United Kingdom maintains a military presence throughout the island of Cyprus – are unique. The two United Kingdom Sovereign Base Areas – encompassing 98 square miles of the island – are unique. As for the 1960 Constitution, this is likewise unique. Indeed, Stanley de Smith, Downing Professor of the Laws of England at the University of Cambridge, noted shortly after 1960 that: “Unique in its tortuous complexity and in the multiplicity of the safeguards that it provides for the principal minority, the Constitution of Cyprus stands alone among the constitutions of the world.”⁴

All of which raises a simple question: why? To be exact, why was Cyprus so unique back in 1960 and why does it remain so unique to this day? The exegesis lies in the perceived importance to the United States and to the United Kingdom of the following: (a) the Greek-Turkish relationship under the NATO umbrella; (b) the American military bases in the eastern Mediterranean; (c) the British military presence in Cyprus; and (d) the pivotal geographical location of the island. So much was effectively confirmed on 9 February 1960 when an assessment of the United States National Security Council, as approved by President Eisenhower, asserted that:

Cyprus has been important to the United States primarily because the controversy over the future status of Cyprus caused a dangerous deterioration of Greek-Turkish and Greek-British relations and disrupted NATO cooperation in the Eastern Mediterranean. Now it is important that when Cyprus gains its independence under the provisions of the London Agreements of February 1959, the new Republic will become a stable and unifying, rather than disruptive, force in relations among Greece, Turkey and the United Kingdom... The chief strategic importance of Cyprus to the West will continue to lie in the British bases and their role in the United Kingdom’s planning and posture for military operations in the Middle East and the Mediterranean... The British airfields on Cyprus are useful to the United States as a possible staging post for Middle East operations and as a possible back-up installation for the US facilities located at Adana, Turkey.⁵

Given that such considerations were clearly shaping American policy in 1959-60, are similar ones influencing American thinking today?

The Turkish invasion and its aftermath

What is clear is that the United States bears a heavy responsibility for its actions or, depending on one’s point of view, inactions during the first few years of Cypriot independence. During the 1960s and early 1970s, the Republic of Cyprus lurched from one crisis to the next until 1974. If the acceptance by Archbishop Makarios of the London Agreement is an example of a “human blunder”, the Turkish invasion of 1974 falls squarely within the definition of “human wickedness”. Turkey, using as its pretext a coup in Nicosia, seized northern Cyprus and ethnically cleansed the area of its predominantly Greek Cypriot population. The Turkish invasion accomplished in practice the long-standing objective of “taksim” (partition). However, it violated the laws of war, the European Convention on Human Rights and the United Nations Charter. Furthermore, it violated the Treaty of Guarantee, for under Article II of the Treaty of Guarantee, Greece, Turkey and the United Kingdom “recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and also the state of affairs established by the Basic Articles of its Constitution.”

Since 1974, Turkey has unlawfully occupied the northern area of the Republic of Cyprus and, from 1983 onwards, it has propped up a puppet regime, the so-called “Turkish Republic of Northern Cyprus”, which no state on the planet has recognised with the solitary exception of Turkey. In these circumstances, the international community continues to recognise only one state in the island of Cyprus, the Republic of Cyprus and continues to accept that the partition is *de facto* rather than *de jure*. Indeed, UN Security Council Resolution 541 (1983) confirms that the unilateral declaration of independence in the occupied north is “incompatible” with the Treaty of Establishment 1960 and the Treaty of Guarantee 1960 and that it is, therefore, “invalid”. Even so, none of the Resolutions relating to Cyprus has gone as far as Security Council Resolution 687 of 1990, the latter of which authorised the use of “all necessary means” to oust Iraqi forces from Kuwait. Accordingly, while the United Nations Security Council has acknowledged the illegality of the invasion, occupation and ethnic cleansing of northern Cyprus, it has not gone as far as to enforce – or authorise others to enforce – its own resolutions. Ironically, the Secretary-General of the United Nations is now promoting a Plan which seeks to legitimise the illegitimate and to reward aggression. Why?

The origins of the Annan Plan

The origins of the Annan Plan date back to the 1970s when, as President of the Republic of Cyprus, Archbishop Makarios entered into the High Level Agreement of 1977, just three years after the Turkish invasion. By doing so, the Archbishop – and the Republic of Cyprus – effectively surrendered any remaining hope of reviving a fully functioning unitary state and embraced the idea of a “bicomunal federation”. In retrospect, this was yet another “human blunder”, albeit one committed at the barrel of Turkish guns. After all, the 1977 Agreement has turned out to be the thin end of the wedge. Since 1977, successive governments of the Republic of Cyprus have made further concessions so that the Republic now embraces the concept of the bizonal, bicomunal federation consisting of two politically equal communities.

Twenty seven years on, the Annan Plan represents the bitter harvest of those seeds laid down in 1977. The final version of the Plan was published on 31 March 2004. However, approximately 9,000 pages of annexes, including legislation, do not appear to have been published.

As far as can be ascertained from those provisions of the Plan which are in the public domain, Mr Annan proposes to establish “a new state of affairs”.⁶ This will rest on a number of pillars. Some of these, such as the ones dealing with the federal government, its constitution and territory, are to be new. Others will not be new, for the Treaty of Establishment 1960, the Treaty of Guarantee 1960 and the Treaty of Alliance 1960 will apply *mutatis mutandis* to the new state of affairs (subject to the provisions of a number of Additional Protocols). At the risk of oversimplification and bearing in mind that the full version of the Annan Plan has yet to be published, this paper draws attention to the contents and legal implications of just two of these pillars: those relating to the structure of “the new state of affairs” and those concerning security.

The structure of the “new state of affairs” under the Annan Plan

As part and parcel of the “new state of affairs”,⁷ the United Cyprus Republic will step into the shoes of the Republic of Cyprus. The United Cyprus Republic will be “an independent state in the form of an indissoluble partnership, with a [single] federal government [in “greater Nicosia”] and two equal constituent states, the Greek Cypriot State and the Turkish Cypriot State.”⁸ The United Cyprus Republic will be “organized under its Constitution in accordance with the basic principles of rule of law, democracy, representative republican government, political equality, bi-zonality, and the equal status of the constituent states.”⁹

Under the Annan Plan, the federal government will, in accordance with the Constitution, “sovereignly exercise legislative and executive competences” in relation to twelve specified matters:

- a. External relations, including [the] conclusion of international treaties and defence policy [the latter of which, according to a “Reference” contained in a footnote in the Plan, “must be formulated and exercised in accordance with agreed security arrangements, and the international obligations of Cyprus.”];
- b. Relations with the European Union;
- c. Central Bank functions, including issuance of currency, monetary policy and banking regulations;
- d. federal finances, including budget and all indirect taxation

- (including customs and excise), and federal economic and trade policy; [incidentally, the word “federal” curiously appears with a lower case “f” at the beginning of point (d) and throughout the Plan];
- e. Natural resources, including water resources;
 - f. Meteorology, aviation, international navigation and the continental shelf and territorial waters of the United Cyprus Republic;
 - g. Communications (including postal, electronic and communications);
 - h. Cypriot citizenship (including issuance of passports) and immigration (including asylum, deportation and extradition of aliens);
 - i. Combating terrorism, drug trafficking, money laundering and organised crime;
 - j. Pardons and amnesties (other than for crimes concerning only one constituent state);
 - k. Intellectual property and weights and measures; and
 - l. Antiquities.¹⁰

Under the Annan Plan, the federal government will “sovereignly” exercise the powers specified in the Constitution, thereby ensuring that “Cyprus can speak and act with one voice internationally and in the European Union, fulfill its obligations as a European Union member state, and protect its integrity, borders, resources and ancient heritage.”¹¹ These provisions suggest that a federation will be established. Even so, do other provisions of the Annan Plan suggest that a confederation will be established? What is beyond any doubt is that the Annan Plan proposes to subdivide the United Cyprus Republic into two “constituent states” of “equal status”. To this end, the Plan provides that: “Within the limits of the Constitution, they [i.e. the two constituent states will] sovereignly exercise all powers not vested by the Constitution in the federal government, organizing themselves freely under their own Constitutions.”¹² Put simply, this means that each constituent state will, subject to the provisions of the Constitution, “sovereignly exercise” all powers not listed at points “a.” to “l.” in the list reproduced above.

Co-operation is ostensibly ensured as each constituent state is obliged to “co-operate and co-ordinate with each other and with the

federal government”¹³. Moreover, the Plan provides that: “The federal government and the constituent states shall fully respect and not infringe upon the powers and functions of each other.”¹⁴ Irrespective of whether the implementation of the Annan Plan will result in a federation or a confederation, it is obvious that the United Cyprus Republic will not be united in the normally understood sense of the term.

With regard to the legislature at federal level, the Annan Plan provides that the United Cyprus Republic will have a federal Parliament composed of two chambers. The Senate, the upper chamber, “shall be composed of an equal number of Greek Cypriot and Turkish Cypriot senators.”¹⁵ In other words, Greek and Turkish Cypriots will each occupy 50 per cent of the seats. And in the Chamber of Deputies, the lower house, seats will be “attributed on the basis of the number of persons holding internal constituent state citizenship of each constituent state; provided that each constituent state shall be attributed a minimum of one quarter of the seats.”¹⁶ In other words, the Turkish Cypriot contingent will in all probability amount to not less than 25 per cent of the total. Crucially, the Plan provides that “Unless otherwise specified in this Constitution, decisions of Parliament need the approval of both Chambers with simple majority of members present and voting, including one quarter of senators present and voting from each constituent state. For specified matters, a special majority of two-fifths of sitting Senators from each constituent state shall be required.”¹⁷ In other words, although the word “veto” does not appear in the Annan Plan, the Turkish Cypriots members of Parliament will effectively have a veto over all legislative decisions if they vote *en bloc*.

Contrary to normal constitutional practice, the United Cyprus Republic will have neither a President nor a Prime Minister at the executive level. The Office of Head of State is to be vested in a Presidential Council, “which shall exercise the executive power.”¹⁸ According to the Plan “The composition of the Presidential Council shall be proportional to the numbers of persons holding the internal constituent state citizenship status of each constituent state, though at least one third of voting members and one third of non-voting members must hail from each constituent state.”¹⁹ In all probability, therefore, Turkish Cypriots will occupy one third of the seats on the Presidential Council. It is important to emphasise that the President of the Council

will not be the President of the United Cyprus Republic. He or she will be President of the Presidential Council and as such will not carry the status or powers of the President of the Republic of Cyprus.²⁰ In further contrast to the 1960 Constitution of the Republic of Cyprus – under which the President and the Vice-President of the Republic were invested with special powers, including a veto²¹ – neither the President nor the Vice President of the Presidential Council shall enjoy a casting vote.²² Indeed, the members of the Presidential Council “shall be equal” with the power “to place an item on the agenda of the Council.”²³ If the Presidential Council fails to reach a consensus, the Annan Plan specifies that the Presidential Council will “make decisions by simple majority of members present and voting unless otherwise stated in this Constitution. Such majority must in all cases comprise at least one member from each constituent state.”²⁴ In other words, if the Turkish Cypriot members of the Presidential Council vote *en bloc*, they will effectively have a veto within the Presidential Council.

Elsewhere in the executive at the federal level, Turkish Cypriots will likewise be allocated significant positions. For example, the heads of the Departments of Foreign Affairs and European Union Affairs “shall not hail from the same constituent state”. In other words, a Turkish Cypriot will head one of these two critical departments. Moreover, the Central Bank of Cyprus, which will be the monetary authority of the United Cyprus Republic, thereby issuing currency, defining and implementing monetary policy and regulating and supervising credit institutions, will be governed by a Board of five members. At least two members must hail from each constituent state and one member “may” be a non-Cypriot. All decisions of the Board of the Central Bank of Cyprus must be taken by simple majority which means that, if a non-Cypriot is appointed to the Board, the Greek Cypriot members may find themselves in a minority without any power of veto.²⁵

As for constitutional reform, the Annan Plan provides that “The Constitution of the United Cyprus Republic may be amended by separate majority of the voters of each constituent state in accordance with the specific provisions of the Constitution.”²⁶ In other words, notwithstanding the fact that they will constitute just 18 per cent or so of its population,²⁷ Turkish Cypriots will effectively have a veto in respect of any proposal to amend the Constitution.

One could go on in a similar vein, but the reader will be spared any further details in relation to the Constitution except one. Under the Plan, the Supreme Court will perform a critical role:

The Supreme Court shall uphold the Constitution and ensure its full respect... The Supreme Court shall, *inter alia*, resolve disputes between the constituent states or between one or both of them and the federal government, and resolve on an interim basis deadlocks within federal institutions if this is indispensable to the proper functioning of the federal government.²⁸

One trusts that the judges will be fully independent irrespective of their ethnic background. Even so, the Annan Plan does not leave anything to chance. It provides that the Supreme Court “shall comprise an equal number of judges from each constituent state and three non-Cypriot judges until otherwise provided by law.”²⁹ As Lord Hannay of Chiswick has described it, this arrangement will “provide a tie-breaking mechanism should one be needed.”³⁰ This is emblematic of the Annan Plan and raises an inevitable question. How can such an arrangement be reconciled with the principles of democracy, independence and sovereignty?

In fairness to the proponents of the Annan Plan, they have not done anything to disguise its overarching philosophy in relation to the Constitution. For example, Mr Michael Klosson, the US Ambassador in Nicosia, is on record as saying that “an organizing principle throughout the plan [is that] no decision can be taken by persons from one constituent state alone... no decision can be taken in any federal organ without substantial support from both constituent states.”³¹ In Mr Klosson’s opinion, the Plan envisages “appropriate, necessary and workable arrangements for a settlement that protects the rights of both Turkish Cypriots and Greek Cypriots.”³²

Mr Klosson is entitled to his opinion but he has left unanswered a basic question. Why should such a principle lie at the heart of the Plan? When Mr Didier Pfirter, Legal Adviser to the Secretary-General’s mission of good offices, was recently invited by a journalist to address a related question – how could it be fair for “20 per cent [to] have 28 per cent of the land?” – he was honest enough to concede that:

If you put it in these terms, it might seem unfair. It is always [*sic*] when you have figures like this... Every effort has been made, and is being made, to make the plan as fair as possible. But the concerns of the two sides unfortunately clash in many ways. One has to try and strike as fair as possible a balance as one can.³³

Everything hinges upon how one defines “fairness,” particularly against the backdrop of an invasion, military occupation and *de facto* partition in violation of international law.

In the United Kingdom, the Scots total approximately 10 per cent of the population; in the United States, the African Americans total approximately 13 per cent; in South Africa, the whites total approximately 14 per cent; in Israel (as distinct from the occupied territories), the Arabs total approximately 18 per cent; and, in Turkey, the Kurds total approximately 20 per cent. Yet none of these ethnic groups has the benefit of any of the external security guarantees, constitutional powers and – though the word does not seem to appear in the Annan Plan – vetoes, which will be accorded to the Turkish Cypriot community under the Plan. Why should Cyprus be any different to the United Kingdom, the United States, South Africa, Israel, even Turkey? Can it be fair for the United Cyprus Republic to be so dissimilar bearing in mind that it will be a sovereign state and a democracy? Does the international community really wish to establish a precedent under which a minority may eventually acquire equal status, equal rights and its own “constituent state” as a consequence of an invasion carried out in breach of international law?

As far as the author of this paper has been able to ascertain, no satisfactory answers have ever been provided to the questions set out above. Indeed, whenever the author has had the opportunity to put these questions to serving or retired diplomats, the response has always been the same: a shrug of the shoulders followed by a quip about how “different” or “unique” Cyprus is!

The Annan Plan and the security of the United Cyprus Republic

The Annan Plan provides for “demilitarisation” but in a rather curious way: “Cyprus shall be demilitarised, and all Greek Cypriot and Turkish Cypriot forces, including reserve units, shall be dissolved, and their arms

removed from the island, in phases synchronised with the redeployment and adjustment of Greek and Turkish forces.”³⁴

In keeping with its other features, the Plan provides for a unique form of “demilitarisation”. The devil, as ever, is in the detail. As already noted, the London Agreement of February 1959 spawned three treaties: the Treaty of Establishment 1960, the Treaty of Guarantee 1960 and the Treaty of Alliance 1960. Under the Plan, “Cyprus shall be demilitarized” subject to the provisions of three treaties which will apply *mutatis mutandis* to the new state of affairs (in accordance with various Additional Protocols). Abraham Lincoln, that great American President, once observed that “we cannot escape history.” How right he was! With this in mind, what follows is a brief assessment of how the Annan Plan proposes to deal with two relics of history – the Treaty of Alliance 1960 and the Treaty of Guarantee 1960 – which will have a profound effect on the security of the United Cyprus Republic and its two constituent states.

The Treaty of Alliance

Dealing firstly with the Treaty of Alliance, this was originally entered into in 1960 by the Republic of Cyprus, Greece and Turkey (but not the United Kingdom). Under its original terms, Greece was permitted to station 950 troops in Cyprus and Turkey 650. Following the invasion of 1974, which resulted in over 30,000 Turkish troops landing in the Republic of Cyprus to occupy its northern areas, many people came to regard the Treaty of Alliance as a dead letter. If the said Treaty did become a dead letter in 1974, the Annan Plan proposes to resurrect it. Indeed, the Additional Protocol to the Treaty of Alliance will permit the stationing of 6,000 Greek troops and 6,000 Turkish troops. The Additional Protocol will likewise permit each contingent to deploy 50 (“medium”) battle tanks, 180 infantry fighting vehicles (“with main gun [*sic*] up to 25mm”), 18 towed artillery pieces (“up to 155mm caliber”), 18 air defence missiles (with a “short range up to 7000m”), 6 transport helicopters, 4 light helicopters, 17 light armoured vehicles and 16 air defence cannons (“up to 45mm caliber”).³⁵ If this constitutes “demilitarisation”, Iraq must be full of weapons of mass destruction!

Other provisions of the Additional Protocol to the Treaty of Alliance are likewise difficult to reconcile with the concept of demilitarisation:

The [Greek and Turkish] contingents shall move troops in the constituent state in which they are located by the most direct route between points of embarkation, garrisons and training areas and shall not approach the boundary between the constituent states, or enter into areas which prior to entry into force of the Foundation Agreement were within the buffer zone, or are areas of the Greek Cypriot State which, pursuant to the Foundation Agreement, are or have been subject to territorial adjustment, or the area of the Turkish Cypriot state south of the highway connecting north Nicosia and Famagusta, as defined in Article 4, unless the existing road and port infrastructure necessitates otherwise.³⁶

Why is the prohibition on crossing the “boundary” qualified by the insertion of the final nine words specified above? What do these words mean? Do they allow for the possibility of Turkish troops landing at the port of Larnaca or driving through the southern suburbs of Nicosia?

Perhaps most crucially of all in relation to the foreign policy of the United Cyprus Republic and its long-term security, the Additional Protocol to the Treaty of Alliance provides that:

Upon accession of Turkey to the European Union, all Greek and Turkish troops shall be withdrawn from Cyprus unless otherwise agreed. This will in no way undermine the provisions of the Treaty of Alliance and its Additional Protocols, and the rights and responsibilities conferred thereby.³⁷

Accordingly, what the Annan Plan appears to be saying in relation to the stationing of foreign forces in the United Cyprus Republic is this: 6,000 Greek and 6,000 Turkish troops will be stationed there indefinitely unless and until Turkey accedes to the European Union in which case those 6,000 Greek and 6,000 Turkish troops will be withdrawn unless otherwise agreed and even if those Greek and Turkish troops are withdrawn 950 Greek and 650 Turkish troops may nonetheless be stationed in Cyprus indefinitely in accordance with the provisions of the original Treaty of Alliance 1960!

It is, therefore, evident that the provisions of the Additional Protocol to the Treaty of Alliance may give the United Cyprus Republic a vested

interest in the speedy accession of Turkey to the European Union, for any such accession may eventually result in the withdrawal of most Greek and Turkish troops unless otherwise agreed. However, the Annan Plan does more than to offer such an incentive. It introduces an obligation. “Cyprus,” it provides without actually defining what is meant by the word in this context, “shall maintain special ties of friendship with Greece and Turkey, respecting the balance established by the Treaty of Guarantee and the Treaty of Alliance and this Agreement, and as a European Union member state shall support the accession of Turkey to the Union.”³⁸ Is any other current or prospective European Union member state under any similar obligations? If not, why should “Cyprus” be different? How can such a provision be reconciled with that integral component of state sovereignty, namely the power of a state to conduct foreign relations as it sees fit within the law? Is it consistent with that fundamental principle of international law, namely the equality of states? Will Turkey be under any comparable obligation to “maintain special ties of friendship” with the United Cyprus Republic?

The Treaty of Guarantee

If the Annan Plan is endorsed in the forthcoming referendum, it will renew the importance of the Treaty of Alliance 1960 subject to the provisions of a new Additional Protocol, as explained above. Accordingly, a Greek and a Turkish military presence will remain in Cyprus. Similarly, if the Annan Plan is endorsed, it will renew the importance of the Treaty of Establishment 1960 and the Treaty of Guarantee 1960 subject to the provisions of two separate Additional Protocols. In such an event, the British military presence on the Island of Cyprus will acquire an electoral mandate it has never previously possessed. Furthermore, the British military presence will secure a renewed guarantee from Greece, Turkey and the United Cyprus Republic (the latter of which will step into the shoes of the Republic of Cyprus). Why?

Part of the answer lies in the Treaty of Establishment, a document stretching over 72 pages. The Treaty of Establishment provides *inter alia* that “two areas in the Island of Cyprus shall remain under the sovereignty of the United Kingdom”.³⁹ It also provides that the Republic of Cyprus “shall accord to the United Kingdom the rights set forth in Annex B to the Treaty of Establishment”.⁴⁰ It further provides that:

The Republic of Cyprus shall co-operate fully with the United Kingdom to ensure the security and effective co-operation of the military bases situated in the Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area, and the full enjoyment by the United Kingdom of the rights conferred by this Treaty.⁴¹

The Treaty of Guarantee reinforces the provisions of the Treaty of Establishment. This is because Article III of the Treaty of Guarantee specifies that:

The Republic of Cyprus, Greece and Turkey undertake to respect the integrity of the areas retained under United Kingdom sovereignty at the time of the establishment of the Republic of Cyprus, and guarantee the use and enjoyment by the United Kingdom of the rights to be secured by it by the Republic of Cyprus in accordance with [the Treaty of Establishment].⁴²

It is important to add that, in relation to the Treaty of Guarantee, the Annan Plan will do more than bolster British interests. It will “enhance” the individual and collective rights of the three guarantor powers, Greece, Turkey and the United Kingdom. As Baroness Symons of Vernham Dean, Minister of State in the British Foreign and Commonwealth Office, declared in the House of Lords on 12 May 2003, the Annan Plan:

envisages an Additional Protocol amending the Treaty of Guarantee. This amendment reaffirms the full pre-existing rights of the three guarantor powers. In addition, the guarantor powers’ rights would be enhanced so that in addition to the independence, territorial integrity, security and constitutional order of Cyprus being guaranteed (as per the 1960 treaty), an amended treaty would also guarantee the territorial integrity, security and constitutional order of each of the two constituent states of a United Cyprus Republic.⁴³

For reasons outlined below, the provisions of the Treaty of Guarantee, particularly Article IV, are difficult to reconcile with the fundamental principles of international law. Nevertheless, if the electors on both sides

of the buffer zone vote “yes” to the Plan in the forthcoming referendum, at least two inter-connected consequences will follow. Firstly, the provisions of the Annan Plan – including the Treaty of Establishment, the Treaty of Guarantee and the Treaty of Alliance – will be deemed to have acquired the legitimacy which can only be obtained via the ballot box. But secondly, a “yes” vote may remove any lingering doubts as to the legality of some of the key provisions within the 1960 Treaties. Indeed, such a vote may remove any doubts as to the legality of these Treaties *per se*.

The United Kingdom has long considered the Treaty of Guarantee to be in force and it believes that the United Nations shares this view.⁴⁵ However, some lawyers have questioned the legality of the Treaty, arguing that the Treaty is void because it was accepted by Archbishop Makarios under duress at the Lancaster House Conference in February 1959. Mr Criton G Tornaritis who served as Attorney-General of the Republic of Cyprus, challenged the legitimacy of the Treaty of Guarantee on other grounds, namely that it was unequal, inequitable and unjust. According to Mr Tornaritis, the Treaty of Guarantee as well as the Treaty of Alliance:

offend against peremptory rules of customary international law and as far as they so offend cannot be valid and enforceable. By the obligation undertaken by the Treaty of Guarantee to keep unalterable in perpetuity the constitutional structure and order imposed upon it, the Republic of Cyprus is subjected to the will of the guaranteeing Powers and is deprived of one of the fundamental requirements of a state as an international person, that of internal independence and territorial supremacy.⁴⁶

The central problem with the Treaty of Guarantee is that its attempt to permit the guarantor powers to “take action” in certain circumstances is difficult if not impossible to reconcile with international law. More specifically, Article IV of the Treaty of Guarantee is difficult if not impossible to reconcile with Article 2(4) of the United Nations Charter which obliges Members of the United Nations and of the international community generally to “refrain in their international relations from the threat or use of force against the territorial integrity and political

independence of any State, or in any manner inconsistent with the purposes of the United Nations.”

Accordingly, it is generally accepted that international law, as reflected by Article 2(4) of the United Nations Charter, prohibits the use or the threat of the use of force by states in their international relations save in two distinct circumstances: firstly, in self-defence “if” an armed attack has occurred, as provided by Article 51 of the Charter; and secondly, with the authority of a UN Security Council Resolution passed under Chapter VII of the Charter. However, some states have argued that international law recognises – or should recognise – that force may be used lawfully in other circumstances in addition to the two exceptions. For example, Turkey has long argued that its invasion of Cyprus was carried out in accordance with its purported rights and obligations under the Treaty of Guarantee. The same argument has also been advanced by Turkey to justify its continuing military occupation of northern Cyprus. Leaving aside the argument as to whether or not Turkey acted – and remains – in breach of the Treaty of Guarantee, does Mr Annan believe that international law permits the guarantor powers to take military action in Cyprus pursuant to Article IV?

One other point must be made. Article 103 of the United Nations Charter states that:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Why is Mr Annan asking the people of Cyprus to endorse a treaty provision at odds with the very Charter he is obliged to uphold? Does he believe that the perceived rights of the Guarantor powers under Article IV of the Treaty of Guarantee prevail over their obligations under the United Nations Charter, or vice versa?⁴⁴ Perhaps he would care to clarify before the people of Cyprus vote in the referendum.

Be that as it may, what can be said with a degree of certainty is that if they vote “yes” to the Annan Plan, the Greek Cypriots will not only add a veneer of electoral legitimacy to the Treaty of Guarantee, they may effectively forfeit the right to bring an inter-state action to the International

Court of Justice with reference to the Treaty of Guarantee. After all, the Turkish Cypriots would probably veto any such move at federal level.

Why is a referendum being held?

The gravity of the position cannot be overemphasised. A treaty will normally acquire legitimacy by being signed by a duly authorised representative of the state which will become a party to the treaty. Even so, there is a school of international legal thought which suggests that, in circumstances where the Treaty in question will give rise to ramifications of profound significance, it can only acquire true legitimacy if it is endorsed expressly in a referendum by the very people who will be most affected by it. To quote Dr Benedict Kingsbury, currently the Director of the Institute for International Law and Justice at New York University Law School:

[T]he theory of sovereignty provides the means by which people can express, and be deemed to have expressed, consent to the application of international legal norms and to international institutional competences. Consent, whether express or tacit, plays a crucial role in legitimising international legal rules and institutional activities in situations where their legitimacy might be in doubt, as where they infringe deeply held egalitarian principles. This legitimising function is of vast importance for the international legal system. It is not clear that in the present state of heterogeneous international society, any non-consensual legitimising principle is viable; and sovereignty appears to be a relatively low-cost means to organise ‘consent’.⁴⁷

With regard to these thorny issues as applied to the Treaty of Guarantee in particular and to the Annan Plan generally, reference must also be made to an article written by the distinguished American academic lawyer, Professor David Whippman of Cornell Law School in the United States. In his article, published in the *University of Chicago Law Review* in Spring 1995, at a time when the crisis in the Balkans was in full swing, Professor Whippman observed that:

when a state clearly consists of two or more distinct and violently opposed political communities, consent to a treaty authorising

external intervention should reflect the concurrent will of each of those communities. In other words, the assent of each of the relevant subnational communities should be deemed necessary to the formation of the state's consent to external military intervention.

With specific reference to Cyprus, which offered a useful point of comparison with the Balkans, Professor Whippman recalled the events of 1959 and 1960. In doing so, he adduced that:

The circumstances surrounding [the] execution of the 1960 Treaty of Guarantee illustrate the fine line between external coercion and permissible international pressure... From a purely majoritarian perspective, Cyprus did not consent to the 1960 Accords, and it should not be bound by them. But if one accepts the view that Cyprus is composed of two separate and equal political communities, then evaluating the voluntary character of its consent to the 1960 Accords becomes more complicated... [I]f in the future the two Cypriot communities accept a constitutional framework along the lines envisioned in the "set of ideas" [drafted by Boutros Boutros Ghali, the then Secretary-General of the UN] their joint consent should be deemed the voluntary consent of the state of Cyprus... In such divided states, the values associated with sovereignty may be better protected by striking a balance between the rights of the relevant subnational communities, even if external guarantees are required to maintain that balance, than by rigid application of state system principles premised on the notion of the state as a single political community. From this perspective, even a countermajoritarian political settlement coupled with external enforcement powers is valid and consistent with *jus cogens* norms because the joint assent of the communities that form the state constitutes the consent of the state. Such consent does, as a matter of law, and should, as a matter of policy, validate the use of force, so long as the use of force remains within the limits set by the state's consent.⁴⁸

If this learned assessment is accurate, does it explain why the Annan Plan, which owes its origins to the aforementioned "set of ideas", is being put to a referendum on both sides of the "Green Line"?

Irrespective of the answer, one thing is clear. If Greek Cypriots and Turkish Cypriots approve the Annan Plan together with the three treaties dating from 1960 and their respective additional protocols, they will be deemed to have legitimised a set of documents containing numerous provisions which, in the absence of a referendum, would be difficult if not impossible to justify under international law. In particular, they will be deemed to have endorsed the purported right of the guarantor powers to take action in the island in which they live.

The illusion of security

In the circumstances, does the Annan Plan offer the "security" which Greek Cypriots have long hankered after? For their part, advocates of the Annan Plan have offered little by way of clarification as to why the Treaty of Guarantee will be preserved by the Annan Plan. However, they have been quite open that it will be. In a lecture delivered in London on 22 September 2003, Lord Hannay of Chiswick, who had just retired as the British Government's representative for Cyprus, opined that the Annan Plan ensured "the maintenance in force" of the Treaty of Guarantee which "gave to the Guarantor Powers an ultimate right to intervene".⁴⁹ In an article published on 6 October 2003 in the Turkish Cypriot newspaper, *Kıbrıs* and reproduced on the official website of the American Embassy in Nicosia, Ambassador Klosson went further:

The Annan Plan includes multi-layered safeguards designed to protect – not diminish – the rights of Turkish Cypriots... The Treaties of Guarantee and Alliance will continue, not end. The scope of the Treaty of Guarantee, in fact, is enlarged to embrace the territorial integrity, security and constitutional order of the two constituent states. That is an important *enhancement*, not diminution of Turkey's guarantee. [The italics appear in the version of the article appearing on the US embassy website.] The number of Turkish troops allowed under the Treaty of Alliance will increase from 650 to 6,000 until Turkey joins the EU. A similar increase, of course, applies to Greece. In addition, a UN force will remain on the island to assist the parties with implementation of the settlement and to prevent any misunderstanding or incidents in the early going. The UN mandate, however, does not in any way diminish the rights and obligations of the guarantor powers.⁵⁰

More recently, similar sentiments were expressed by Mr Didier Pfirter, Legal Adviser to the Secretary-General's mission of good offices, who averred that the 1960 system of guarantees "will actually be considerably strengthened" by the Annan Plan.⁵¹

In essence, therefore, the Annan Plan proposes to create a significant imbalance. Whereas the two constituent states will be emasculated militarily, Greece, Turkey and the United Kingdom will not be. Whereas the preamble to the Annan Plan obliges "the Greek Cypriots" and "the Turkish Cypriots" to resolve that "the tragic events of the past shall never be repeated" and to renounce forever "the threat or use of force, or any domination by or of either side",⁵² the Annan Plan fails to oblige the guarantor powers to give equivalent undertakings, particularly in relation to the threat or use of force.⁵³

All of which raises a series of attendant questions, the most obvious of which is this: why? Yet, there are other questions of deeper practical significance. What will happen if one or more of the guarantor powers takes unilateral military action in the United Cyprus Republic in breach of the Treaty of Guarantee or the United Nations Charter? Does the Treaty of Guarantee oblige the other guarantor powers to take action or does it merely reserve them the right to take action? Will the United Nations ride to the rescue?

The Monitoring Committee and UN operation in Cyprus: toothless tigers?

Yet again, the omens are not good. To begin with, the Annan Plan provides for the "implementation" of the Plan in general and "demilitarisation" in particular to be "monitored" by "a Monitoring Committee composed of representatives of the guarantor powers, the federal government, and the constituent states, and chaired by the United Nations."⁵⁴ Why is Mr Annan proposing self-monitoring, albeit under UN chairmanship? Can he expect the poachers of the past to turn themselves into the honest gamekeepers of the future?

Moreover, the Plan invites the Security Council "to decide to maintain a United Nations peacekeeping operation in Cyprus, which shall remain as long as the federal government, with the concurrence of both constituent states, does not decide otherwise, and shall be authorised to deploy and operate freely throughout Cyprus". The Plan

envisages that the United Nations peacekeeping operation will "monitor and verify compliance with the security provisions" of the plan. Crucially, the Plan envisages that the peacekeeping operation shall do no more than "monitor the implementation of this Agreement and use its best efforts to promote compliance with it and contribute to the maintenance of a secure environment". More specifically the peacekeeping operation will "use its best efforts to ensure the fair and equal treatment under the law of persons from one constituent state by the authorities of the other".⁵⁵ As any lawyer will no doubt appreciate, any obligation to use your "best efforts" is a rather hollow one. Indeed, the United Nations operation will be called upon to "implement its mandate through, for example, conducting patrols and establishing positions and roadblocks, as well as receiving complaints, making inquiries, presenting facts, giving formal advice and making representations to the authorities."⁵⁶ One doubts very much that the generals in Turkey will be trembling in their boots at the thought of receiving any such representations!

It follows that the Annan Plan does not appear to envisage the Security Council endowing the United Nations operation in Cyprus with any enforcement powers under Chapter VII of the UN Charter. Put another way, it does not appear that the United Nations operation in Cyprus will be given any of the teeth which were given to the Allies in Kuwait in 1991 or to United Nations forces elsewhere. Accordingly, the evidence suggests that the United Nations operation will be as toothless as UNFICYP (United Nations Peacekeeping Force in Cyprus) has been.

As for any security that may arise by virtue of membership of the European Union, the Plan provides that:

The participation of Cyprus in the European Security and Defence Policy shall fully respect the provisions of the Foundation Agreement and the provisions of the Treaties of Guarantee and Alliance and the Additional Protocols thereto, and in no sense undermine those provisions.⁵⁷

In the words of the British Foreign and Commonwealth Office: "The Treaty of Guarantee... will not be affected by Cyprus's accession to the

European Union.”⁵⁸ If that is so, will the Annan Plan preclude the European Union from ever riding to the rescue of the United Cyprus Republic in the event of any intervention purportedly carried out pursuant to Article IV of the Treaty of Guarantee?

Some key questions

This paper has not been able to address each and every question raised by the Annan Plan, particularly those relating to property and population issues. Nevertheless, on the basis of the documentation in the public domain, it has raised a number of other questions of profound significance. It is hoped that each will be answered satisfactorily by the proponents of the Annan Plan so that the people of Cyprus may be in a better position to reach an informed and considered decision prior to voting in a referendum. These may be summarised as follows:

1. Why is there such a rush to piece together the Annan Plan which, if implemented, will shape the future of the island of Cyprus for decades and possibly centuries to come?
2. The final version of the Plan, published on 31 March 2004, reportedly contains approximately 9,000 pages of attachments and annexes, including legislation, which do not appear to have been published. Will they be published before the referendum? If not, why not? It appears that 182 pages of the Plan have been published. Will each voter in Cyprus be provided with a full copy of the final version of the Plan in a language they can understand? Is each voter entitled to (a) read the final version in full, (b) digest its contents, (c) absorb its ramifications, (d) obtain adequate legal advice and (e) consider the nature and implications of that advice? If so, why will the voters be given just a few days to arrive at an informed and considered decision *vis-à-vis* a document which will if implemented not only shape their lives, but all future generations as well?
3. Can the provisions of the Annan Plan be reconciled with the fundamental principles of democracy, human rights and international law, including European Union law? If so, how, why and to what extent?
4. Does the international community really wish to establish a

precedent under which a minority may eventually acquire equal status, equal rights and even its own “constituent state” as a consequence of an invasion carried out in breach of international law? If so, why?

5. Will a vote in favour of the Annan Plan give Turkey and the other guarantor powers an unquestionable legal right, if certain circumstances arise, to take military action in the United Cyprus Republic and within each constituent state? If so, can such a right be reconciled (a) with the obligations of the guarantor powers under the United Nations Charter and (b) with the status of the United Cyprus Republic as an independent state? Can such a right override the obligations of the guarantor powers under the United Nations Charter? Put simply, which prevails: a right under the Treaty of Guarantee or an obligation under the United Nations Charter?
6. Whereas the preamble to the Annan Plan obliges “the Greek Cypriots” and “the Turkish Cypriots” to resolve that “the tragic events of the past shall never be repeated” and to renounce forever “the threat or use of force, or any domination by or of either side” why does the Plan fail to oblige the guarantor powers to give equivalent undertakings, particularly in relation to the threat or use of force?
7. The “implementation” of “demilitarisation” will be “monitored” by “a Monitoring Committee composed of representatives of the guarantor powers, the federal government, and the constituent states, and chaired by the United Nations”. Why?
8. Will the United Nations operation in Cyprus be given enforcement powers under Chapter VII of the United Nations Charter? If not, why not?
9. Will the Annan Plan preclude the European Union from reacting militarily in the event of any intervention purportedly carried out by a guarantor power pursuant to Article IV of the Treaty of Guarantee?
10. Lastly, why does Mr Annan propose to subject the people of Cyprus to a Plan, the provisions of which have never been applied anywhere else in the world? Why should Cyprus be unique?

Concluding thoughts

Shortly before 11 September 2001, Dr Henry Kissinger, that controversial sage of the American political establishment, wrote that:

For the west, the pivotal country is Turkey, the strongest military power in the region, allied to the West, friendly to Israel and, because of the indispensability of its geography, important to all the contending forces... The industrial democracies – especially Europe and the US – must remember that crucial elements of their basic national security are at stake. Their preferences regarding Turkey’s domestic structure must be balanced against these imperatives.⁵⁹

History suggests that these are amongst the foremost motivating factors underpinning American support for a Plan which seeks to legitimise the illegitimate, to elevate still further the status of the Turkish Cypriots and to enhance the perceived rights of Turkey and the other guarantor powers. However, a broader consideration is playing a key influence as well. On 3 November 2003, Mr Richard Holbrooke, the United States Ambassador to the United Nations during the Clinton Administration, indicated as much when he delivered the Turgut Ozal Memorial Lecture at the Washington Institute for Near East Policy. Notwithstanding the strains brought about in American-Turkish relations by Iraq, Mr Holbrooke referred to “the fact – the obvious fact – that Turkey sitting between Iraq and Europe, is now, more than ever before, the critical state in both the war on terrorism and the search for a more stable and democratic Moslem world.” He went on to discuss Cyprus, in the process revealing that:

The long-standing plan, which I have been closely associated with, was a three-pronged approach: first, to get the EU to invite Cyprus to join the EU; second, to use this to push the two Cypriot communities into a productive negotiation that would produce the long-sought bizonal, bicomunal federation; and third, to open accession talks for Turkey to join the EU.⁶⁰

In a similar vein, two veterans of the Clinton Administration have recently written that:

The need to resolve the Cyprus conflict thus extends well beyond the fate of less than one million people on the island. It has major implications for the future of nearly 70 million Turks, Europe’s relations with the Muslim world, and the entire Mediterranean region... When [President George W.] Bush attends the NATO summit meeting in Istanbul in May 2004, he would participate in a historic ceremony marking a unified Cyprus’s entry into the EU and Turkey’s close ties with the west – a perfect tonic after the recent strains in US-Turkish relations.⁶¹

In view of the above, one may draw two conclusions in relation to the United States, one of the driving forces behind the Annan Plan. The first is that there is a considerable amount of continuity in respect of American policy towards the eastern Mediterranean. But the second is that the Americans are pressing for a settlement not because it is an end in itself, but because it will act as a means to an end which may, for Europe if not for the United States, backfire.

With the referendum looming, the people of Cyprus find themselves trapped between a rock and a hard place. Ambassador Michael Klosson of the United States is on record as saying that: “The choice before both sides now is to accept the solution embodied in the Annan Plan or live with no solution for the foreseeable future.”⁶² His colleague, Thomas Weston, the US Special Co-ordinator has put it more robustly. “It’s important to stress,” he remarked in July 2003, “that the choice facing us is not between the Annan plan and some hypothetical “better plan”. If a better one were out there somewhere, it would have come along by now. The choice is between the Annan Plan and no plan.”⁶³ For this reason, the people of Cyprus are facing an uncomfortable dilemma and an uncertain future. Openheim, the great authority on international law, once wrote that:

In entering the Family of Nations a State comes as an equal to equals; it demands certain consideration to be paid to its dignity, the retention of its independence, or its territorial and its personal supremacy...⁶⁴

The people of Cyprus should remember these words as they contemplate how to vote in the forthcoming referendum because Mr Annan is inviting

them to give their consent to a Plan under which they will surrender their rights and stand perpetually in the shadow of others. Bearing in mind that nothing grows in the shadows cast by trees, any vote in favour of the Annan Plan will generate a number of adverse and irreversible consequences. More to the point, it would represent a human blunder of historic proportions. If history teaches anything, it is this: if you find yourself approaching a trap, it is advisable to stop walking.

Endnotes

Introduction

- 1 Dr Vassilis K Fouskas is a Reader in International Relations at Kingston University, UK and, most recently, the author of *Zones of Conflict; US Foreign Policy in the Balkans and the Greater Middle East* (London: Pluto press, 2003 – already translated into Turkish and Greek). He is the founding Editor of the refereed periodical *Journal of Southern Europe and the Balkans*. He is also the Director of the Vane Ivanovic Library at Kingston University.
- 2 The “Annan Plan” is a figure of speech, rather than a reality. Personally, the Secretary General of the UN did not draft any plan; he did not contribute to any of the parameters shaping the Cyprus issue over the last decade or so; and it is doubtful whether he read, cover to cover, “his” plan as such. The inverted commas indicate that the plan’s paternity lies outside the institutional powers of the Secretary General: it lies in Washington and London.

The case against the Annan Plan

- 1 © Professor Van Coufoudakis, Dean Emeritus and Professor Emeritus in Political Science at Indiana-Purdue University, Fort Wayne. This chapter represents the transcript of a paper delivered in London on 18 March 2004.

Legitimising the illegitimate?

- 1 © Dr Klearchos A Kyriakides, School of Law, University of Hertfordshire. This chapter is based upon a paper delivered in London on 18 March 2004. Since then, it has been updated to reflect the changes made to the Annan Plan.
- 2 Formerly ‘secret’ now declassified document, ‘Cyprus Conference 1959: Verbatim Report of the Second Plenary Session held at Lancaster House at 7pm on Wednesday 18 February 1959,’ pages 1 to 3, PRO FO 371/144641, folio RGC1073/35B. Crown copyright material held at the Public Records Office (the National Archives, Kew Gardens, Surrey TW9 4DU) is reproduced by permission of Her Majesty’s Stationery Office.
- 3 Formerly ‘secret’ now declassified document, ‘Cyprus Conference 1959: Verbatim Report of the Second Plenary Session held at Lancaster House at 7pm on Wednesday 18 February 1959,’ pages 17 to 18, PRO FO 371/144641,

- folio RGC1073/35B.
- 4 Stanley A de Smith, *The New Commonwealth and its Constitutions*, Stevens & Sons, London, 1964, p296.
 - 5 NSC 6003, Washington DC, 9 February 1960, reproduced in *US Department of State, Volume X, Part 1, Foreign Relations of the United States, 1958-60: E. Europe Region, Soviet Union, Cyprus*, Office of the Historian, Department of State Publication 10040, Government Printing Office, Washington D.C., 1993. For a comprehensive analysis of American policy from 1954 to 1974, see Claude Nicolet, *United States Policy Towards Cyprus, 1954-1974: Removing the Greek-Turkish Bone of Contention*, Bibliopolis, Mannheim and Mohnessee, 2001.
 - 6 Article 1(1) of the Main Articles of the Comprehensive Settlement of the Cyprus Problem, dated 31 March 2004 (“the Plan”).
 - 7 Article 1 (1) of the Main Articles of the Plan.
 - 8 Article 2 (1) (a) of the Main Articles of the Plan.
 - 9 Article 2 (1) (a) of the Main Articles of the Plan.
 - 10 Article 14 (1) of the Basic Articles of the Plan.
 - 11 Article 2 (1) (b) of the Main Articles of the Plan.
 - 12 Article 2 (1) (c) of the Main Articles of the Plan.
 - 13 Article 2 (2) of the Main Articles of the Plan.
 - 14 Article 2 (3) of the Main Articles of the Plan.
 - 15 Article 22 (3) of the Basic Articles of the Plan.
 - 16 Article 22 (4) of the Basic Articles of the Plan.
 - 17 Article 5 (1) of the Main Articles of the Plan.
 - 18 Article 26 (1) of the Basic Articles of the Plan.
 - 19 Article 26 (6) of the Basic Articles of the Plan.
 - 20 Article 26 of the Basic Articles of the Plan sets out the provisions relating to the Presidential Council. Article 27 of the Basic Articles of the Plan sets out the provisions relating to the President and the Vice-President of the Council.
 - 21 The veto, exercisable separately or jointly by the (Greek Cypriot) President and the (Turkish Cypriot) Vice-President of the Republic is provided for *inter alia*, in Articles 50 and 57 of the 1960 Constitution.
 - 22 Article 27 (4) of the Basic Articles of the Plan.
 - 23 Article 26 (8) of the Basic Articles of the Plan.
 - 24 Article 26 (7) of the Basic Articles of the Plan.
 - 25 In relation to the Heads of the Departments of Foreign Affairs and European Union affairs, see Article 28 (3) of the Basic Articles of the Plan. In relation to the Central Bank of Cyprus, see Article 32 of the Basic Articles of the Plan.
 - 26 Article 2 (4) of the Main Articles of the Plan.
 - 27 According to the “Profile” provided by the Foreign and Commonwealth Office on its official website, the Greek Cypriot people of the Republic of Cyprus number 78 per cent, the Turkish Cypriots number 18 per cent and the Maronites and Latins number 4 per cent. By the same token, the main religions are Greek Orthodox (78 per cent), Muslim (18 per cent) and Maronite, Armenian Apostolic and other (4 per cent). www.fco.gov.uk
 - 28 Articles 6 (1) and 6 (3) of the Main Articles of the Plan.
 - 29 Article 6 (2) of the Main Articles of the Plan.
 - 30 Lord Hannay of Chiswick GCMG, 27th Corbishley Memorial Lecture, 22 September 2003, ‘Cyprus: Missed Opportunities and the way ahead’.
 - 31 Michael Klosson, US Ambassador to the Republic of Cyprus, ‘A Cyprus Settlement: Political Equality and Security for All’, remarks made on 14 October 2003, www.americanembassy.org.cy/sparchitects.htm
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 - 33 Interview given by Mr Didier Pfirter, Legal Adviser, Secretary-General’s mission of good offices, to MEGA TV, on 29 February 2004: www.cyprus-unplan.org/annan_plan_interviews.html
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 - 39 Article 1 of the Treaty of Establishment.
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 - 41 Article 2 (2) of the Treaty of Establishment.
 - 42 Article III of the Treaty of Guarantee.
 - 43 Written answer by Baroness Symons of Vernham Dean, Minister of State, Foreign and Commonwealth Office. Hansard, *House of Lords Debates*, WA 6: 12 May 2003.
 - 44 Some of these issues are addressed in R St J MacDonald, ‘International Law and the Conflict in Cyprus,’ 19 *Canadian Yearbook of International Law*, 3, 3-48 (1981) and Eugene T Rossides, ‘Cyprus and the Rule of Law,’ *Syracuse Journal of International Law and Commerce* (Syracuse University College of Law), Volume 17, Spring 1991, Number 1.
 - 45 Written answer by the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office. Hansard, *House of Lords Debates*, WA 37: 30 July 1997.
 - 46 Criton G Tornaritis, *Cyprus and its constitutional and other legal problems*, Nicosia, Second Edition, 1980.
 - 47 Benedict Kingsbury, ‘Sovereignty and Inequality,’ *European Journal of International Law*, 9 (1998), 599-625, at pages 601-602.
 - 48 David Whippman, ‘Treaty-Based Intervention: Who Can Say No?’, 62 *University of Chicago Law Review*, 607.
 - 49 Lord Hannay of Chiswick GCMG, 27th Corbishley Memorial Lecture, 22 September 2003, ‘Cyprus: Missed Opportunities and the way ahead’.

- 50 Michael Klosson, US Ambassador to the Republic of Cyprus, ‘The Annan Plan: Securing Cyprus’ Future for All, English test of Op-Ed, *Kibris* newspaper, Monday, October 6, 2003: www.americanembassy.org.cy/kibrisop-ed.htm
- 51 Interview given by Mr Didier Pfirter, Legal Adviser, Secretary-General’s mission of good offices, to MEGA TV, on 29 February 2004: www.cyprus-un-plan.org/annan_plan_interviews.html
- 52 Point ii of the Preamble to the Main Articles of the Plan.
- 53 The Preamble to the Additional Protocol to the Treaty of Alliance states that “Cyprus, Greece and Turkey... ii Reaffirming their pledge to resist any attack or aggression against the independence or the territorial integrity of Cyprus Have agreed as follows...” This is not the same as an undertaking to renounce forever “the threat or use of force”.
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- 60 Ambassador Richard Holbrooke, ‘The United States and Turkey: Mending Fences?’, www.washingtoninstitute.org/media/turgut/holbrooke.htm
- 61 Henri J Barkey and Philip H Gordon, ‘A good deal for Cypriots – and for the world,’ *International Herald Tribune*, 9 September 2003. Mr Barkey is a professor of international relations at Lehigh University in Bethlehem, Pennsylvania and Mr Gordon is a senior fellow at the Brookings Institution. According to the *International Herald Tribune*, “they worked on Turkey and Cyprus at the State Department and National Security Council respectively in the second Clinton Administration.
- 62 Michael Klosson, US Ambassador to the Republic of Cyprus, ‘The Annan Plan: Securing Cyprus’ Future for All, English test of Op-Ed, *Kibris* newspaper, Monday, 6 October, 2003: www.americanembassy.org.cy/kibrisop-ed.htm
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Appendix

Some relevant extracts from key international treaties

“1. For the purposes of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... (i) enforced disappearance of persons; (j) the crime of apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health ...

“2. For the purposes of paragraph 1: ... “deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law ... “persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”

– **Article 7, Rome Statute of the International Criminal Court 1998**
(The Rome Statute has been ratified by the Republic of Cyprus, Greece and the United Kingdom but not by Turkey which has not even signed it.)

“All Members [of the United Nations] shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

– **Article 2(4), United Nations Charter (as amended)**

“Greece, Turkey and the United Kingdom, taking note of the undertakings of the Republic of Cyprus set out in Article I of the present Treaty, recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and also the state of affairs established by the Basic Articles of its Constitution.

“Greece, Turkey and the United Kingdom likewise undertake to prohibit, so far as concerns them, any activity aimed at promoting, directly or indirectly, either union of Cyprus with any other State or partition of the Island.”

– **Article II, Treaty of Guarantee 1960**

“The rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

– **Article 14, The European Convention on Human Rights, 1950**