

So Near and yet so Far: Elusive Settlement in Cyprus¹

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RÉSUMÉ

Les espoirs de réunifier Chypre avant son adhésion à l'Union européenne en mai 2004 se sont évaporés après l'échec des négociations sous les auspices de l'ONU le 11 mars 2003. Cet article examine les raisons pour lesquelles une solution de la question chypriote n'a pas été atteinte dans le contexte de l'adhésion. Il avance la thèse que malgré le contexte positif créé par l'élargissement de l'UE la résolution du conflit chypriote dépendra du progrès du processus de l'adhésion européenne de la Turquie et de l'amélioration des relations récentes entre les deux communautés chypriotes.

ABSTRACT

Hopes to reunify Cyprus before its accession to the EU in May 2004 have faded after the breakdown of UN negotiations on March 11, 2003. This article explores why a settlement in Cyprus remained elusive in the context of accession. The author argues that although the EU context has made a number of positive contributions to the conflict resolution process, the resolution of the conflict will ultimately hinge on Turkey's progress towards EU membership and whether negotiators can capitalize on a recent thaw in relations between the two Cypriot communities.

Introduction

After forty years of a UN-peacemaking engagement, the Cyprus conflict continues to evade resolution. Aside from the two agreements of the late 1970s,² in which the two Cypriot communities agreed to a bi-communal federation as the future political set-up in Cyprus, no UN-sponsored talks since then have managed to yield any tangible results. The settlement initiatives of the 1980s were undermined by, on the one hand, the Greek Cypriots' policy of internationalizing the conflict via Greece that was aimed at securing the withdrawal of Turkish troops and thus bypassing the Turkish Cypriots³ and, on the other hand, the Turkish Cypriots' creation of new facts on the ground by proclaiming statehood in 1983.⁴

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The Cypriot EU membership bid of July 1990 gave rise to new hope that the *de facto* partition of the island could be overcome within the context of Cyprus' EU accession. Although initially there was little enthusiasm for the Greek-Cypriot move to join the EU, the international community gradually came to see that the EU could provide a conducive framework for an overall settlement.⁵ This article focuses on the reasons for which the hoped for breakthrough in the twelve-and-a-half years between the submission of Cyprus' membership application and the December 2002 Copenhagen European Council has not materialized. The section that follows explores the potential of the EU to catalyze the conflict resolution process in Cyprus in the context of Cyprus' accession. Then, the effects of 'the EU factor' on the conflict and the conflict parties are examined. A final section identifies the factors that are likely to contribute to a settlement post-Copenhagen.

Catalytic Potential of the EU

Structurally, the EU provided a number of resources that had the potential of making a settlement within the context of accession attractive to both Cypriot communities. These resources took the form of a more prominent international standing, influence at the table in Brussels that comes with "a microphone and a name-plate",⁶ participation in a 'security community' (a feature, which is commonly ascribed to the EU),⁷ opportunities for foreign direct investment, unqualified access to a wider market, and entitlement to Community funds and subsidies. However, these resources proved to hold too little value for the two Cypriot communities to be able to unfold the desired catalytic effect. For the Greek Cypriots, participation in a 'security community' carried the most value as EU membership was equated with more security from Turkey, while all the other resources did not give them much extra benefit to what they already had. However, as the Greek Cypriots could assume that they could join the EU with or without a solution based on their status as the internationally recognized representative of Cyprus, the EU's resources were effectively devalued as incentives. Although for the Turkish Cypriots, the EU's resources looked very beneficial in the light of their pariah status in the international arena, the value of these resources decreased significantly as the Turkish Cypriots had to work on the basis that they could only receive them after a solution.

As an actor, there were three groups of strategies the EU had available within the constraints of the accession process to further its catalytic potential. The first group could have been used to enhance the perceived value of the resources. For example, in the area of stability of institutions, the EU could have insisted on a very strict implementation of the rule of law to help allay the security fears of the Turkish Cypriots, whereas in areas that appeared costly to both Cypriot communities, within the context of a settlement, the EU could have focused on the relaxation of compliance. Another strategy the EU could have adopted to enhance the perceived value of the resources was to make accession conditional on a settlement. A second group of strategies that was available to the EU were confidence-building measures. For example, the EU could have organized meetings of businessmen, journalists and political influentials in Brussels to discuss EU-related issues. Finally, the EU could have utilized the mechanisms of the accession process in support of the UN-mediated conflict resolution process by making the timing of the stages and milestones of the accession process sensitive, or at least complementary, to settlement talks.

When discussing the catalytic potential of the EU, it is important to consider the constraints EU membership imposes on a settlement. EU membership comes with certain obligations and any precedents set, or concessions made, need to be seen in the context of the existing member states and the continuing functionality of the EU after the accession of new members. The following analysis of the implications of EU membership for the four core issues of a settlement of the Cyprus conflict shows that these constraints are not particularly onerous:

Constitutional-political set-up: EU member states need to speak with a single voice within the EU Council of Ministers. Article 203 of the EC Treaty (TEC) stipulates in this regard that “[t]he Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State”.⁸

The ‘one voice’ requirement has major implications on the type of political system adopted by a future Cyprus. In effect, it excludes outright the possibility of a two-state solution. It also excludes a confederation, as in a confederation sovereignty is vested in the constituent units and only few powers or functions are transferred to the central authority while the constituent units retain their separate international legal personality and

thus a right to unilaterally dissolve the confederation.⁹ Thus federal, or unitary, constitutional-political set-ups are the only solutions for a future Cyprus that meet the requirements of EU membership. It is important to note here that the question of how the powers between the national level and sub-national levels are distributed in a member state is one in which the EU has no competence to interfere. However, it is important to keep in mind the decision of the European Court of Justice according to which “[n]o EC Member State may successfully invoke internal difficulties or provisions of its internal law, even if these have constitutional status, to justify non-compliance with or delayed implementation of provisions of EC law”.¹⁰

Territory: The question of how the territory of the island shall be distributed between the Greek and Turkish Cypriots in a united Cyprus is outside the purview of the EU.

Security: The mechanisms proposed by each Cypriot community to alleviate its security concerns are compatible with the obligations of EU membership. For example, the Treaties of Guarantee and Alliance could remain in force and the demilitarization of the island would be compatible with the Common Foreign and Security Policy insofar as Cyprus could provide non-combatant and logistical assistance.

Three Freedoms: EU membership has implications on the three freedoms pertinent to a settlement of the Cyprus conflict only insofar as they affect the proper functioning of the common market and/or the guarantee of some basic principles, especially that of non-discrimination.

(1) Freedom of movement – In EU law, freedom of movement pertains to all nationals of the member states as laid down in Article 18 (1) TEC. However, this does not prohibit discrimination in a so-called “wholly internal situation”.¹¹ In the Cyprus case, this means that restrictions on the freedom of movement within a unified Cyprus are possible as long as they only affect Cypriot nationals.

(2) Freedom of settlement – EU law prohibits restrictions on the freedom of establishment of nationals of a member state in the territory of another member state. This prohibition of restrictions not only pertains to the setting-up of businesses, but also to the acquisition and use of land and buildings and the entry of key personnel.¹² Concerning Cyprus, freedom of

establishment as granted by Community law has a number of important consequences: First, a solution of the freedom of settlement issue would not be able to put a blanket restriction on Greek Cypriots moving their residence to the North as the Turkish Cypriots demand. First, a solution would not be able to prohibit (i) companies registered in an EU member state from setting up a branch in the North and employ Greek Cypriots; and (ii) Greek-Cypriot companies from registering outside Cyprus, say in London, and then setting up a branch in the North and bringing in their own key personnel. However, given that this only applies to managerial and supervisory personnel, this would not result in large shifts of Greek Cypriots. Second, Greek Cypriots with dual nationality, whereby the second nationality has been conferred by another EU member state, could not be restricted from taking up their residence in the North on grounds of their ethnicity as this would violate Article 13 TEC. This is particularly pertinent to the Greek-Cypriot diaspora, sizable numbers of which settled in Great Britain and acquired British citizenship before independence and in the wake of the events of 1974. Third, any restriction on the freedom of settlement within Cyprus would need to apply equally to all EU citizens. For example, a restriction could require that in order to preserve local identity a percentage of residents must originate in the area concerned. However, such a restriction would be difficult to implement in the Cyprus case as a large percentage of the Greek-Cypriot population would have a justifiable claim of having originated in the North of the island.

(3) Freedom to acquire property – According to EU law, the freedom to acquire property is closely connected with the one of establishment. As Article 44 (e) TEC stipulates, a national of a member state should be enabled to acquire real estate – this could be both a private residence or a production facility – in the territory of another member state for the purpose of taking up an economic activity in that member state. Within Community law, the only restrictions that have been allowed on the acquisition of property concern second homes.¹³ However, in all cases the restriction was only granted for a transitional period after which the rights of property acquisition had to apply equally to both nationals and foreigners.

The implications of Community law on the freedom to acquire property in Cyprus are broadly similar to those on the freedom of settlement. The rights of establishment prohibit blanket restrictions on the right to acquire

property anywhere on the island for economic activities, which includes a worker buying a house as a primary home. Furthermore, the freedom of movement of capital allows other investments, for example, into second homes. In the former case, the rights of establishment must be granted on accession, whereas in the latter case the Community has set precedents for transitional periods. Community law does not cover the dispute between the Greek and Turkish Cypriots as to whether those persons displaced in the wake of the events of 1974 should be compensated for the loss of their property or whether their property should be returned as this is a matter entirely internal to a member state.

Effects of ‘the EU factor’

In the twelve-and-a-half years between the submission of the Cypriot membership application and its decision at the Copenhagen European Council to admit Cyprus into the Union, the EU sought to assume a catalytic role by pursuing four different types of strategies: (i) conditionality; (ii) using Turkey’s EU membership bid; (iii) selling Cyprus’ accession to the Turkish Cypriots; and (iv) confidence-building.

Conditionality has been tried in two instances: First, the Commission’s Opinion of 1993 attached the conditionality that there must be surer prospects of a settlement before moving forward with Cyprus’ membership bid.¹⁴ The argument behind conditionality from the EU’s perspective was that the accession of a divided Cyprus would be disruptive to the workings of the EU.¹⁵ Therefore, the EU could justify making accession conditional on a settlement. However, this approach was unsustainable as accession could be indirectly vetoed by the Turkish Cypriots by simply holding out against a settlement, which in turn, took away the incentive for the Greek Cypriots to cooperate. This form of conditionality was dropped when the date for the start of accession negotiations with Cyprus was set in 1995, without any more reference to a settlement, or the prospect thereof, being a requirement.¹⁶ Second, after a four-year interlude, the EU reintroduced conditionality with its Helsinki *Presidency Conclusions* of 1999. Here it stated that “all relevant factors” would be taken into account when deciding on Cyprus’ entry, effectively making accession conditional on attitudes of the conflict parties within the settlement talks.¹⁷

The strategy of using Turkey's EU membership bid has also been employed on two occasions: First, with the conclusion of the Customs Union with Turkey in 1995, the EU hoped to induce Turkey to put pressure on the Turkish Cypriots to be more amenable during the settlement talks.¹⁸ With Turkey's exclusion from the list of countries included in the accession process at the Luxembourg European Council in 1997, this hope became a distant possibility. At the Helsinki European Council in 1999, the EU undertook to use Turkey's membership bid for a second time when Turkey was afforded candidate status and strong Turkish support to the search for a settlement in Cyprus was explicitly laid down as one of Turkey's obligations on its path to accession.¹⁹ With the EU's decision at the Copenhagen European Council in 2002, where Turkey was given December 2004 as the date for assessing its fulfillment of the membership criteria along with the prospect of opening accession negotiations soon thereafter, no more explicit reference to Cyprus was made.²⁰ Thus, the EU relaxed the obligation for Turkey to comply with the conditions attached to its accession that were laid down in Helsinki.

The strategy of selling Cyprus' accession to the Turkish Cypriots and, by extension, attempting to get the Turkish Cypriots to join the Greek-Cypriot negotiating team, was adopted more intermittently by the EU. On various occasions before and after the opening of accession negotiations with the Greek-Cypriot administration in March 1998, Commission representatives held contacts with representatives of the Turkish-Cypriot community in order to spell out the advantages that EU membership would bring to their community, but also to allay their concerns about the effects of membership.²¹ Furthermore, in an eleventh-hour attempt before the conclusion of accession negotiations with Cyprus, the EU tried to lure the Turkish Cypriots with the specific offer of substantial financial contributions in case of a settlement, intended to allow the northern third of the island to catch up with the more prosperous southern part.²²

The EU's approach at confidence-building focused on promoting a diversity of bi-communal activities, ranging from the sponsorship of meetings of the Pan-Cypriot Trade Union Forum to the financing of restoration projects on both sides of the divide in Nicosia.²³ When assessing the impact of the 'EU factor' it is useful to consider the dynamics of the Cyprus conflict at three levels: (i) the level of the conflict parties themselves; (ii) the level between the conflict parties; and (iii) the level between the conflict parties and their environment.²⁴

While at the level of the conflict parties themselves, EU accession did not change the view that the conflict parties have of the conflict issues, it was, however, responsible for new conflict behavior on both sides. In this sense, EU accession can be said to have had a negative impact. On the Greek-Cypriot side, it provided an extra avenue of internationalization and a potential mechanism for forcing the Turkish troops from the island. This behavior was aimed at decisively weakening the Turkish Cypriots and so reducing the incentive for the Greek Cypriots to make concessions during the settlement talks. On the part of the Turkish Cypriots, EU accession resulted in the dangerous conflict behavior of taking steps towards parallel integration with Turkey, which threatened the permanent division of the island. For example, in October 1990, after the General Affairs Council had approved Cyprus' membership application, the Turkish Cypriots and Turkey issued a joint declaration in which they announced the abolition of passport controls.²⁵ Following the publication of *Agenda 2000* on July 15, 1997, in which the Commission recommended the start of accession negotiations with Cyprus but not with Turkey, the "TRNC" and Turkey decided to establish an Association Council to "determine the measures to be taken with the aim of achieving integration between the two countries in the economic and financial fields and achieving partial integration in matters of security, defence and foreign affairs".²⁶ With the emergence of these behaviours, there was a very real chance of EU accession undermining the conflict resolution process it was supposed to be catalyzing.

At the level between the conflict parties, the biggest effect of EU accession was on the conflict parties' willingness to negotiate. Although the EU never left any doubt concerning Cyprus' membership credentials, there was a real debate on letting a divided Cyprus join. The EU's documents (e.g. the Commission's *Opinion* and the Helsinki *Presidency Conclusions*) were often worded in a way that implied that the approach of the Greek Cypriots towards the settlement process would be taken into account when the EU made its decision on Cyprus' membership. As a result, the Greek Cypriots were forced to return to the negotiating table whenever a new settlement initiative was launched in order not to endanger their membership bid. This was borne out by the fact that, on a number of occasions, the Greek Cypriots claimed that they would not continue with, or return to, the talks, only to back down for fear of being blamed the intransigent party.²⁷ On the part of the Turkish Cypriots, steps towards Cyprus' EU accession had a negative

impact, though this was tempered whenever the EU at the same time took positive steps towards Turkey's accession. While the 1994 Corfu decision to include Cyprus in the next enlargement and the publication of *Agenda 2000* seriously undermined the ongoing settlement talks,²⁸ the 1999 Helsinki decision, though heavily criticized by the Turkish Cypriots, did not derail the nascent proximity talks due to Turkey's receipt of candidate status. Likewise, the sealing of Cyprus' entry in Copenhagen did not cause the Turkish Cypriots to abandon the discussions on Kofi Annan's comprehensive settlement plan, even though the EU's decision was strongly denounced, likely because Turkey was given at least a date for a review of its preparedness for accession negotiations. It should also be noted here that the Turkish-Cypriot return to the negotiating table in 1997 and 1999 was closely correlated to pending decisions on Turkey's EU membership bid. It was not until the Turkish-Cypriot November 2001 settlement initiative, that Cyprus' EU membership prospect came more positively into play, in that the looming deadline of Cyprus' accession helped at least indirectly to re-start the talks. However, it is arguable whether this should be seen as Cyprus' EU accession having a catalytic effect, given that along with their initiative, there was no indication of a change of stance on the part of the Turkish Cypriots.²⁹

Aside from affecting the conflict parties' willingness to negotiate, EU accession also had an effect on the negotiating behavior of the Greek and Turkish Cypriots. In order to not harm their membership bid, the Greek Cypriots had to appear accommodating to the proposals of the UN, which were not always in line with their demands as was made evident by the acceptance of Boutros Boutros-Ghali's 'set of ideas' and Kofi Annan's settlement plan in spite of intensive internal debates. For their part, the Turkish Cypriots tried to use this to their advantage by pushing their position harder.

At the level between the conflict parties and their environment, EU accession impacted in three ways: First, the EU imposed limits on the form of the future constitutional-political set-up in Cyprus in that EU membership excludes a confederation or a two-state solution. The impact of this on the settlement process depends on one's perspective. While on the one hand this has limited the options for a settlement, it had the positive effect of removing doubt about a federal solution. Second, Cyprus' EU accession provided a graduated deadline for finding a settlement. This had

the effect of galvanizing the international community, giving new impetus to the search for a solution. Third, EU accession allowed the UN to be more inclusive of Turkish-Cypriot positions, as the Greek-Cypriot's hands were tied because of their EU aspirations. Thus, the UN Secretary-General's special adviser, Alvaro de Soto, could listen more extensively to Denktash's confederation proposal during the proximity talks in July 2000.³⁰ It is also notable that Annan's settlement plan made reference to the Belgian model, endorsed by the Turkish Cypriots, when discussing Cyprus' external and EU relations and included the requirement for political equality and the maintenance of the Treaties of Guarantee and of Alliance as demanded by Denktash.³¹

In sum, it can be said that overall the 'EU factor' had a catalytic effect in that it visibly empowered the UN-mediated conflict resolution process without, however, achieving the hoped for breakthrough. In short, what factors are likely to contribute to a settlement post-Copenhagen?

Outlook

With its decision to let Cyprus join on 1 May 2004, the EU lost much of its leverage over the Greek Cypriots as the strategy of making accession conditional on a settlement has ceased to be applicable. Therefore the most useful role the EU can now play is to nurture Turkey's EU membership aspirations. However, this would require that the debates within the EU on whether Turkey could ever join the EU at all as a full member stopped and that the EU made once and for all clear what the conditions for Turkey's EU membership are. In other words, Turkey would need to have reassurance that concessions in Cyprus really enhance its membership prospects.

A second contributing factor to a settlement would be to revive the momentum that was built up in the final stage of Cyprus' accession process. Even though the talks based on the Annan plan broke down in March 2003, the UN should still initiate a new round of negotiations, capitalizing on the new developments on the ground, namely the opening of the 'green line' and the Republic of Cyprus' package of measures to improve the livelihood, and end the international isolation, of the Turkish Cypriots.

NOTES

1. This paper draws extensively on the author's Ph.D. dissertation.
2. Namely the 1977 high-level agreement between Archbishop President Makarios and Denktash, and the 1979 ten-point agreement between President Kyprianou and Denktash. For the full texts of these agreements, see Oliver P. Richmond, *Mediating in Cyprus: The Cypriot Communities and the United Nations* (London and Portland: Frank Cass, 1998), pp. 258-59.
3. See Peter Zervakis, "The Accession of Cyprus to the EU: The Greek Viewpoint," in Heinz-Jürgen Axt and Hansjörg Brey, eds., *Cyprus and the European Union: New Chances for Solving an Old Conflict?* (Munich: Südosteuropa-Gesellschaft, 1997), pp. 141-42.
4. For more details on the background of the Turkish-Cypriot declaration of independence, see Zaim M. Necatigil, *The Cyprus Question and the Turkish Position in International Law* (Oxford: Oxford University Press, 1993), pp. 184-204.
5. See UN Security Council, Resolution 1062 (1996), 28 June 1996, para. 13; UN Security Council, Resolution 1092 (1996), 23 December 1996, para. 17; and UN Security Council, Resolution 1117 (1997), 27 June 1997, para. 14.
6. Graham Avery and Fraser Cameron, *The Enlargement of the European Union* (Sheffield: Sheffield Academic Press, 1998), p. 33.
7. See Ole Wæver, "Insecurity, security, and asecurity in the West European non-war community," in Emanuel Adler and Michael Barnett, eds., *Security Communities* (Cambridge: Cambridge University Press, 1998), pp. 69-118.
8. Article 203, Treaty Establishing the European Community, consolidated version (in force since May 1999), OJ C340, 10 November 1997.
9. On defining elements of confederations, see Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa and London: The University of Alabama Press, 1991 [1987]), pp. 7 and 105.

10. Quoted in LOGON Report 2000, *New Challenges for the Local Level: Experiences made by Associations of Local and Regional Authorities in Austria, Finland and Sweden on Issues related to EU Accession*, pp. 34-35.
11. See Case 175/78, *La Reine v Vera Ann Saunders* [1979], ECR, p. 1129 and Case C-64/96 and C-65/96, *Land Nordrhein-Westfalen v Kari Uecker and Vera Jacquet v Land Nordrhein Westfalen* [1997], ECR, p. I-3171.
12. See Articles 43 and 44 TEC.
13. For example, Austria, Finland, and Sweden were allowed to maintain their “existing legislation regarding secondary residences for five years from the date of accession”. Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Kingdom of Norway, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden, concerning the accession of Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, OJ C241, 29 August 1994, pp. 35, 38 and 41.
14. See European Commission, *The challenge of enlargement – Commission opinion on the application by the Republic of Cyprus for membership*, Bulletin of the European Communities, Supplement 5, 1993, pp. 16-17.
15. See *ibidem*, pp. 8 and 13.
16. See General Affairs Council conclusions, 6 March 1995 (<http://europa.eu.int/comm/enlargement/cyprus>).
17. See Helsinki European Council, *Presidency Conclusions*, 10-11 December 1999, para. 9b.
18. See Heinz Kramer, “The EU-Turkey Customs Union: Economic Integration amidst Political Turmoil,” in *Mediterranean Politics*, 1 (1996) 1, p. 72.

19. See Helsinki European Council, Presidency Conclusions, 10-11 December 1999, para. 12; and Council Decision 2001/235/EC, 8 March 2001, on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey, OJ L85, 24 March 2001, p. 16.

20. Copenhagen European Council, Presidency Conclusions, 12-13 December 2002, paras. 18-19.

21. See Neill Nugent, "Cyprus and the European Union: A Particularly Difficult Membership Application," in *Mediterranean Politics*, 2 (1997) 3, p. 68.

22. See Seville European Council, Presidency Conclusions, 21-22 June 2002, para. 24; and Brussels European Council, Presidency Conclusions, 24-25 October 2002, Annex I para. 8.

23. See European Commission, Regular Report on Cyprus' Progress towards Accession, 13 November 2001, p. 9.

24. For this useful distinction, see Christopher R. Mitchell, *The Structure of International Conflict* (Basingstoke: The Macmillan Press, 1981), pp. 47-48.

25. See "Important messages issued during Akbulut's visit," in *Briefing*, Issue 807, 8 October 1990, p. 11.

26. Agreement between the Government of the Republic of Turkey and the Government of the Turkish Republic of Northern Cyprus on the establishment of an Association Council, 6 August 1997, Lefkosia, Article II.

27. See, for example, "Clerides and Denktash agree on date but little else," in *Briefing*, Issue 933, 5 April 1993, p. 11; and "Clerides fury at UNFICYP mandate resolution," in *Cyprus Mail*, 9 December 1999.

28. See "EU entry prospect sparks fresh debates," in *Briefing*, Issue 1001, 8 August 1994, p. 5; and Report of the Secretary-General on his Mission of Good Offices in Cyprus, S/1997/973, 12 December 1997, para. 6.

29. See "Denktas wants Greek Cypriots to accept his conditions as Cyprus realities," in *Kıbrıs*, 27 November 2001.

30. See “Denktas: We are better off than pre-Geneva,” in *Turkish Daily News*, 7 August 2000.

31. See Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, 11 November 2002.