

CYPRUS 2003 EU Accession and Failed UN initiatives

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RÉSUMÉ

Cet article décrit les différentes étapes des négociations qui ont abouti au plan Annan. L'auteur souligne le rôle joué par les principaux acteurs dans ce processus, entre autres Kofi Annan, Alvaro de Soto, Hannay, Holbrooke, Cléridès et Denktash. Il explique comment le plan proposé par le secrétaire général de l'ONU Kofi Annan pour résoudre la question chypriote a échoué et les espoirs nés de la signature par la République de Chypre du traité d'adhésion à l'Union européenne.

ABSTRACT

This article describes the background and negotiations leading to Kofi Annan's ultimate plan. The author highlights the role played by key players including Kofi Annan, Alvaro de Soto, Hannay, Holbrooke, Clerides and Denktash, among others. He outlines how the Annan plan would not have succeeded as hoped and how the recently signed by the Republic of Cyprus EU Accession Treaty affects hopes for a settlement of the Cyprus problem.

At the Hague, on March 11, 2003, UN Secretary-General Kofi Annan brought to an end his intense mediation efforts for a comprehensive Cyprus solution following the Turkish-Cypriot rejection of his third revised plan.

How did we get there? Why did the UN mediation effort fail after nearly three years of intensive negotiation? What is next for Cyprus in the aftermath of the failed Hague meetings?

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Background to the Annan Initiatives

Sporadic efforts to keep the talks on Cyprus alive continued during the 1990s following the failure of the 1992 “set of ideas” presented by UN Secretary-General Boutros Ghali. These efforts continued despite the fact that on April 24, 1994, the so-called “Turkish Cypriot Assembly” endorsed Denktash’s proposal to abandon federation as the basis for a comprehensive settlement in favor of a confederation. This marked a significant public shift in the Turkish Cypriot negotiating position. This shift violated the 1977 and 1979 high level agreements and the UN Security Council resolutions that endorsed the principle of a bicomunal-bizonal federation. The sporadic settlement efforts included face-to-face meetings between the President of Cyprus and the Turkish-Cypriot leader during 1997 in Troutbeck, New York and in Glion, Switzerland.

The coming of the Clinton administration provided a new momentum for a comprehensive Cyprus settlement. First, the break-up of Yugoslavia gave legitimacy to confederation schemes and to ethnic separation. Second, the deterioration in Greek-Turkish relations led to a near crisis situation over the Imia islets in 1996. A resolution of the Cyprus problem was expected to have a positive effect on Greek-Turkish relations. Third, the 1996 European Court decision on the Loizidou case held Turkey accountable for the consequent loss of Loizidou’s enjoyment of her property rights in the occupied areas. This ruling challenged settlement efforts that attempted to limit the property rights of displaced Greek Cypriots. Fourth came the attempt by the government of Cyprus to enhance its defensive capability by purchasing the Russian S-300 anti-aircraft missile system (1996-98). Under American and Turkish pressure, the government of Cyprus canceled, in December 1998 the deployment of these missiles. This decision undermined the defense cooperation between Greece and Cyprus and confirmed Turkey’s regional hegemonial rule.

Fifth and last in this list was the support by the Clinton administration of Cyprus' EU membership. Under the influence of Richard Holbrooke the Clinton administration reversed the policy of previous administrations that opposed European involvement in the Cyprus problem as well as the membership of Cyprus in the EU. The reason for this shift was twofold. It allowed Washington to increase pressure for a settlement because progress towards EU accession was linked to the political settlement of the problem. It also allowed Washington to link the Cypriot application to that of Turkey. Washington thus became Turkey's greatest advocate in the EU without regard to whether Turkey met EU membership criteria.

During his May 1998 visit to Cyprus, Holbrooke presented a new process for a comprehensive solution of the Cyprus problem. Holbrooke's fundamental assumptions became the parameters of the subsequent Annan plans on Cyprus. This included the acknowledgement of the laws and political procedures of the so-called "TRNC" by the Government of Cyprus and held the promise of the *de-jure* recognition of that political entity once a comprehensive settlement had been reached. Holbrooke saw a new state emerging out of the proposed settlement based on a confederation of two sovereign and largely independent states. Turkey maintained its guarantees, while the issue of the settlers was defined along 'humanitarian' aspects. Washington raised the Cyprus issue at the G-8 meeting in Cologne, Germany, on June 20, 1999. It succeeded in getting a statement on Cyprus endorsing talks without preconditions; discussion of all issues between the leaders of the two communities; sustained talks until a solution is found, and consideration of relevant UN resolutions and treaties.

Continued proximity talks under UN auspices and the G-8 directive led nowhere. Denktash held fast to his demand for recognition of his sovereign state. In a desperate move to save the talks, UN Secretary-General Kofi Annan called for a meeting of President Clerides and Raouf Denktash in New York. In his opening

statement of September 13, 2000, Annan indicated that “each of the parties represents its side and no one else, as the political equal of the other...the equal status of the parties must and should be explicitly in the comprehensive settlement...” The implications of the “deliberate ambiguity” of this statement were important. Much as Richard Holbrooke had recommended in May 1998, it was intended to placate Denktash’s demand for recognition and acceptance of the equality of his regime to that of the internationally recognized Republic of Cyprus. The Secretary-General’s statement had Washington’s prior approval, according to Alfred Moses, President Clinton’s Cyprus emissary. Denktash held fast during the proximity talks that followed.

The ‘non-papers’ exchanged in this period marked major concessions on the part of the government of Cyprus. They provided major derogations from the *acquis communautaire*, from the decisions of European Courts on Cyprus, and from the UN Security Council resolutions. This was evident on the issues of the Turkish settlers, the three freedoms (property, settlement, movement), and the necessary territorial adjustments. The proximity talks ended in deadlock in the spring of 2001, despite the efforts of American and British mediators and the continued Turkish threats about the consequences of the accession of Cyprus to the EU.

The events of September 11, 2001, and Washington’s efforts to build a coalition in the war against terrorism, encouraged Ankara to play the role of America’s faithful ally in the region. Ankara was concerned about the consequences of an expanded war on terrorism on Iraq, and needed Washington’s support to obtain vital IMF loans and to advance its case in the EU. Under prodding from Alvaro de Soto, the UN Secretary-General’s Cyprus Representative, Tom Weston, the US Department of State Emissary on Cyprus and David Hannay of the U.K., Denktash presented the government of Cyprus with his “December surprise”. This was on the eve of the EU summit at Laeken and the Security Council meeting on Cyprus which was

likely to criticize Denktash for the failure of the proximity talks. Following an invitation by Raouf Denktash and an exchange of dinners, the two leaders began a series of face-to-face intensive negotiations on January 16, 2002, under the guidelines of the G-8 meeting.

Denktash held fast in his proposals for a confederation of two independent, sovereign, recognized states with minor territorial concessions that would least inconvenience the population of the Turkish Cypriot state. His proposals called for expanded Turkish military guarantees and significant Turkish forces to remain on Cyprus. He demanded the withdrawal of the Cypriot application to the EU, or its consideration by the EU without Turkey's approval, and linked the accession of Cyprus to that of Turkey. Alvaro de Soto, David Hannay and Tom Weston continued to press primarily the government of Cyprus to "split the difference" in order to arrive at a comprehensive settlement. In view of the gap separating the positions of the two sides in key areas, the Secretary-General presented his own specific proposals on November 12, 2002.

Kofi Annan's Engagement and Failure

Denktash's 'December surprise' led to a flurry of diplomatic activity on the part of the U.S., the UK and the UN during the course of 2002. The EU preference was for a Cyprus solution prior to the accession of Cyprus. However, the Commission and the Council of Ministers repeatedly stated that Turkey had no veto on the accession of Cyprus, that the Turkish and the Cypriot applications were not linked, and that Cyprus would become a member in the absence of a political settlement. This is why Cyprus was welcomed as one of the new EU members in the next wave of expansion in Copenhagen on December 12-13, 2002.

This did not affect the negotiating approach taken by Alvaro de Soto, the UN representative, Tom Weston, the American Department of State representative, and Sir David Hannay of the UK. Capitalizing on the priority given to EU accession by the Government of Cyprus, they linked the issue of accession to the EU, Turkey's membership and the political settlement on the island. The Copenhagen European Council meeting of December 12-13, 2002, provided the deadline for their negotiating initiatives. The motive was clear. All derogations from the *acquis communautaire*, the decisions of European Courts and from the UN resolutions agreed upon prior to December 12, 2002, would become part of the terms of Cypriot accession and, thus, not open to future challenge by the Greek Cypriots. Paragraph 11 of the Presidency Conclusions of the Copenhagen European Council on December 13, 2002, confirmed the EU's willingness to "accommodate the terms of a settlement in the Treaty of Accession in line with the principles on which the EU is founded...the Commission, shall decide upon adaptation of the terms concerning the accession of Cyprus to the EU with regard to the Turkish Cypriot community".

Following the pattern of earlier negotiations, the international initiatives built on concessions already made by the government of Cyprus. Alvaro de Soto and Tom Weston repeatedly urged the two sides to "meet halfway" in order to achieve the elusive political solution. The problem with that approach was that the new concessions came from the Greek Cypriot side, while Denktash held firm on issues such as the recognition of his 'state', on territory, the settlers and the creation of a new confederation to replace the Republic of Cyprus. At critical times, these initiatives were enhanced by the direct involvement of the Secretary-General in meetings in New York, in Nicosia and at the Hague. During the course of 2002, and in a desperate attempt to influence the final stages of the Cypriot accession to the EU, Washington leaked rumours of probable troubles in Greek-Turkish relations, incidents on Cyprus and political instability in Turkey if Cyprus became an EU member and Turkey was

denied that privilege. These rumors did not materialize nor did they affect the EU decisions on Cyprus.

As the Copenhagen deadline approached, the Secretary-General's negotiating approach also changed. He abandoned the 'non-papers' exchanged between the government of Cyprus, the Turkish Cypriots and the UN. On November 12, 2002, he presented his own plan for the resolution of the Cyprus problem leaving few issues open to negotiation. Two revised versions followed: one on December 10, 2002, the other on February 26, 2003. These plans, according to Alvaro de Soto, were based on the progress made in the Nicosia negotiations between the two sides, plus proposals by the Secretary-General to bridge the gap in the positions of the two sides. Second, the Secretary-General changed his role from that of "good offices" as authorized by UN Security Council resolutions since 1964, to that of "binding arbitration". This was done without an explicit authorization by the Security Council, or public acceptance of his new role by the two sides. The binding arbitration role was evident in all three versions of his plan, as he assumed authority to dictate the final terms of a settlement in areas where the two sides had not reached a consensus. In addition to the change in his role, the plans came with specific deadlines for their acceptance. The deadline of March 10, 2003, for an agreement at the Hague to bring his plan to a referendum in each of the two communities amounted to a virtual ultimatum unprecedented in this type of negotiations.

Alvaro de Soto succeeded in implementing a page from Holbrooke's May 1998 plan, that is the 'acknowledgement' sought by Denktash for the 'TRNC'. The acceptance by the government of Cyprus of the formation of two technical committees proposed by de Soto to examine which laws and treaties of each side would remain in effect under the "new state of affairs" amounted to the long sought "acknowledgement" of the so called Republic of Northern Cyprus, 02 'TRNC', despite denials on the part of the government of Cyprus. Since 1974, the internationally recognized government of Cyprus had

steadfastly maintained the position that the legal and political procedures and institutions of the 'TRNC' were null and void. That position had also been upheld by court actions in the UK (export certificate cases) and by all international organizations. The fact that these technical committees met and prepared such lists of laws and treaties, was a major concession on the part of the Cyprus government that may create future problems for the Republic of Cyprus.

The international diplomatic effort to close the book on Cyprus coincided with major developments in Cyprus, in Turkey and in the region. In the closing days of 2002 and through February 16, 2003, the Republic of Cyprus entered into a presidential electoral period as required by its constitution. The US, UK, and UN, intensified their efforts for a settlement despite the heated presidential campaign in the free areas of Cyprus. The foreign mediators along with the government of Greece clearly influenced incumbent president Clerides' decision to be a candidate for a third term, even though he agreed to serve only long enough to implement an agreement under the Annan plan. The international mediators believed that president Clerides had the stature to conclude and to sell to the Greek Cypriots a politically costly agreement. The pressures from Kofi Annan, Tom Weston and Sir David Hannay continued even after president Clerides decisively lost the election. Even prior to being sworn in as president and forming his new cabinet or his negotiating team, the newly elected veteran of Cypriot politics, Tassos Papadopoulos was being called upon to make decisions regarding the acceptance of the Annan plan and the proposed referendum that was to be discussed at the Hague on March 10, 2003. Entangling the Annan plan in Cypriot politics and the ultimatum like deadlines did not enhance the credibility of its proposals.

A second major development had to do with Turkish politics. The rise to power of the reformist Islamic party, the Justice and Development Party (AKP), headed by T. Erdogan created false expectations of new flexibility by Turkey on Cyprus. Turkey, with

American help, succeeded in Copenhagen to obtain the target date of December 2004 for commencing talks for EU accession, if certain political conditions were met by that time. The Turkish military promoted the idea that Cyprus was a Turkish national security issue and supported Denktash. Erdogan, in turn, provided contradictory statements as to his government's intentions on Cyprus. He even criticized Denktash for his hard line stance. It was a classic "good cop-bad cop" routine. Erdogan's comments were intended for European consumption, while the military chiefs made the final decisions. The political changes in Turkey, the prospect of economic benefits to the Turkish Cypriot community from EU accession and the perception that Denktash, both politically and physically, may have been in "his last leg" stimulated massive Turkish Cypriot demonstrations against Denktash and in favor of the acceptance of the Annan plan. These demonstrations were endorsed by Kofi Annan, Alvaro de Soto, the US and the British without regard to the consequences of their involvement in Turkish Cypriot politics. A reasoned assessment of the demonstrations in the occupied areas shows that they were motivated primarily by economic motives and by the desire to rid the Turkish Cypriot community of Denktash's dictatorial rule, rather by a fundamental disagreement with the substance of his policies, as in the case of the TRNC's sovereignty, recognition, etc.

The quest for an agreement on Cyprus that met Turkish objectives was also affected by the US decision for régime change in Iraq. Courting Turkish participation in a prospective American action in Iraq negated the possibility of any pressure on Ankara to modify its Cyprus policies. Aware of that reality, Turkey's foreign policy establishment held firm on its positions. This, in turn, enabled Denktash to bring to an unsuccessful end the Annan initiatives at the Hague on March 10, 2003.

Had both sides agreed to the Annan ultimatum for separate referenda on his plan on March 30, 2003, it is doubtful that the Greek Cypriot voters would have approved it. Annan's third revised plan called for approval of the proposed new constitutional and security

arrangements without linking them to the accession of Cyprus to the EU as the previous two versions of the plan did. The opposition to the plan reflected various concerns, including:

- 1) It provided for major derogations from the *acquis communautaire*, from European Court decisions and from the European Covenant on Human Rights that would have reduced all Cypriots to second class citizenship in the EU.
- 2) The proposed new constitutional structure disbanded the Republic of Cyprus and replaced it by a dysfunctional loose confederation of two largely independent states.
- 3) The balance of constitutional power in critical areas such as the Supreme Court and in the Central Bank would be held by foreign nationals not accountable to the Cypriot public.
- 4) Turkey, a non-EU country, would enjoy expanded intervention rights and the right to station forces on the soil of an EU member. Moreover, a demilitarized Cyprus was excluded from all areas of EU defense and foreign policy.
- 5) The majority of Turkish settlers remained, while the definition of citizenship and immigration controls raised serious questions about the continued influx of settlers into Cyprus.
- 6) The plan essentially deprived the Greek-Cypriots of property rights in the Turkish-Cypriot “component state”. A variety of complex provisions, compensation and exchange of property, coupled with restrictions on the rights of settlement and movement, confirmed the derogations from the European Covenant of Human Rights and from decisions of the European Court, as in the Loizidou case.
- 7) The economic cost of integration. Despite abstract pledges of international economic assistance, the Greek-Cypriot economy would bear the burden of the reintegration of the North in the Cypriot economy. Given the economic conditions in the northern

part of Cyprus (per capita income, inflation, unemployment, public debt), the new Cypriot state would not qualify for participation in the Eurozone for many years.

- 8) Territorial issues involving not only the percentage of territory under Turkish-Cypriot control but also the fate of the Karpas peninsula.

The plans presented by Kofi Annan and the negotiations patterns followed by the U.S., the UK and the UN fully conformed to the Holbrooke principles for a Cyprus solution outlined earlier in this essay. Even though these proposals met nearly all of Turkey's and Denktash's goals on Cyprus, they were rejected by Denktash. The ambiguity of provisions on statehood, the settlers, and other similar issues convinced Denktash and Turkey's military to opt for the status quo.

On April 16, 2003, in Athens the Republic of Cyprus will sign the EU accession treaty. Even though developments in and around Iraq and in European-U.S. relations will sideline the Cyprus issue, the perpetuated Cyprus problem will not go away. Turkey will still face the December 2004 deadline with the EU, and lack of any progress on Cyprus, or any other rash action on the island, will not strengthen its case. Because portions of its territory are not under Cyprus government control, the *acquis* will be applied only in the free areas of Cyprus. However, the Republic of Cyprus continues to exist as created by the 1960 independence agreements. This fact has been repeatedly affirmed after the crises of 1963-1964, the invasions of 1974, and the 1983 Turkish Cypriot UDI by all the international community except Turkey and by all international organizations. After April 16, 2003, Turkish forces will be occupying EU territory — a reality that will haunt Turkey in its relations with the EU.

On March 10, 2003, at the Hague, the UN diplomacy and that of the US and UK reached the end of a long road. However, the Cyprus problem remains. More than ever before, those concerned with the

rule of law will need to reevaluate their approach and adapt their thinking to the realities of a new, expanded and united Europe of which Cyprus will be a vital part.

Post Script

Time does not stand still for the Cyprus issue or any other international problem. Since the early April submission of my article on the Annan initiative, a number of developments occurred which require additional analysis.

On April 16, 2003, Cyprus, along with nine other candidate countries acceded to the EU. In the Athens signing ceremony, the Government of the Republic of Cyprus signed the Treaty of Accession on behalf of all of Cyprus, even though portions of its territory remain under Turkish military occupation. The act in itself was the crowning achievement of Cypriot diplomacy. As of that date, the Annan Plan lost its élan. The internationally recognized Republic of Cyprus signed the Treaty, rather than the new entity proposed by the Secretary-General. Moreover, the derogations from the *acquis*, from European Court decisions and from earlier decisions of the UN Security Council could not be imposed as the Secretary-General had demanded.

International mediators involved in the preparation and promotion of the Annan Plan, such as Alvaro de Soto, Tom Weston, and Sir David Hannay have all admitted that although the plan remained the basic document for any future negotiation, it would have to be revised to account for the implications of the Treaty of Accession. The date April 16 thus marked another irony in the long history of the Cyprus problem. Turkey's forces now occupied the soil of one of the EU members, while Turkey did not recognize the Republic of Cyprus, one of the countries that would have to vote on the future of Turkey's EU application.

Turkey, and its Turkish Cypriot cohort, Raouf Denktash, were strongly criticised by the international community for causing the failure of the Annan Plan, while the Secretary-General's April 1, 2003, Report to the Security Council, provided a telling account of the events leading to the failure at The Hague. Suddenly, on April 23, 2003, Serdar Denktash, on behalf of his father and the Turkish Cypriot 'government', announced a conditional lifting of the travel ban across the dividing line by Turkish and Greek Cypriots. Thousands from both communities took advantage of the new measures. For many Cypriots this was the first time in 29 years that they were able to visit their former homes.

There were multiple motives behind Denktash's move which was also endorsed by Turkey. It improved the image of both Turkey and Turkish-Cypriots after their conduct at The Hague and the ensuing international criticism. It also advanced the prospects of Serdar Denktash as successor to Raouf Dentash. In addition, there were economic motives in terms of the anticipated cash flow both from Greek Cypriots visiting the occupied areas and from EU funds that could be shared in the context of confidence building measures (CBM's). There were political motives behind this move as well. It shifted the focus of the Cyprus problem away from Turkey's intransigence to the necessity of CBM's prior to any settlement. It also confirmed the position of Denktash and Turkey on the existence of 'two states' in Cyprus. Greek-Cypriots attempting to visit their homes had to display their passport to the 'authorities' at the Turkish-Cypriot 'border'. This was an important response to the fact that the Republic of Cyprus had signed the Treaty of Accession to the EU. Even though the government of the Republic insisted that such actions did not create conditions of *de facto* recognition of the so-called Republic of Northern Cyprus, or 'TRNC', Denktash saw these manifestations of state activity as one more proof for the positions he advocated in the talks. Moreover, visits to one's property were expected to enhance the policy of property exchange and compensation supported by Denktash and advocated in the Annan Plan.

Despite the outpouring of emotion created by these moves, two conclusions are evident. One is that CBM's do not replace the search for a solution of the Cyprus problem. While international diplomats along with the Government of Cyprus welcomed these moves, they also pointed out that this is not the solution to the problem of Cyprus. Instead, many saw it as a public relations stunt. The other conclusion relates to the domestic political impact of Denktash's move in the free areas of Cyprus. Members of the coalition that supported former president Clerides challenged the government of newly elected Papadopoulos in terms of its 'inaction' in the face of Denktash's challenge as well as his readiness to negotiate on the basis of the Annan Plan. In the former case, everyone in the Greek-Cypriot community failed to anticipate Denktash's move accurately, let alone its emotional impact. While CBM's announced by the government toward Turkish-Cypriots had been under consideration long before the failure at The Hague, their presentation in the aftermath of Denktash's measures was seen as a defensive move whose implications had not been well thought out.

The demand from the opposition to President Papadopoulos to declare his readiness to re-open negotiations based on the failed Annan Plan was a way of rationalizing the defeat of their approach in the February 2003 presidential election. It also served objectives in the leadership succession fight within the Democratic Rally, the party that supported former president Clerides in his failed presidential bid.

The government's position on the Annan Plan was couched in ambiguity. While accepting the plan as a basis for future negotiation, the government also insisted that the plan would have to be amended to reflect the post-April 16 conditions. Moreover, it maintained that conditions were not appropriate for a new round of negotiations in view of Turkey's intransigence. The *deus ex-machina* appeared in the form of Turkish Prime Minister Erdogan who made a May 9 visit to the occupied areas. After a lot of anticipation regarding new unilateral Turkish initiatives on Cyprus, Erdogan reiterated in no uncertain

terms the position advocated by the Turkish military and Denktash. That is, the solution of the Cyprus problem must be based on the recognition of the existence of two independent, sovereign states on Cyprus representing “two separate peoples and two separate religions.” Prime Minister Erdogan effectively brought the Cyprus problem back to square one.

While rapprochement between Greek and Turkish Cypriots is welcome, the fact remains that the exploitation of popular emotion will become counterproductive in the absence of a settlement upholding internationally recognized human rights. CBM’s cannot terminate an illegal occupation or erase its consequences. CBM’s cannot undermine the legal and political standing of the Republic of Cyprus. Cyprus within the EU and compliance with international law provide the only hope of breaking the current deadlock on the issue. The question remains as to whether or not Turkey and its American supporters are ready to recognize the reality. Up until now, strategic considerations emphasizing Turkey’s importance to the US had dominated Washington’s approach to the Cyprus problem. That approach certainly needs to be revisited in the aftermath of Turkey’s conduct before and during the Iraq war.

NOTES

This article reflects an analysis of the Secretary-General’s “Plan” in its original version plus the two subsequent revisions. Interviews were also conducted in Nicosia in January, February and May 2003.