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Factors Encouraging a Secretariat Belief That it Could Shape a Settlement

IT IS CONVENIENT here to indicate the factors encouraging the Secretariat in its belief that a Cyprus settlement devised by it could in effect be imposed at the Copenhagen EU summit meeting, which took place on 12 and 13 December 2002.

GREEK CYPRIOT ATTITUDES

So far as concerns the Greek Cypriot side, the Secretariat knew that its collective leadership, headed by President Clerides until 16 February 2003, was determined to secure reunification of the Island. (Such determination was to be adhered to just as firmly by the Greek Cypriot leadership headed thereafter by President Papadopoulos, even though the detailed arrangements which President Clerides and President Papadopoulos might be prepared to accept differed.) The Secretariat well knew of Greek Cypriot fears that, were the Greek Cypriot side to act in a manner which could be perceived by third parties as obstructing a Cyprus settlement, this could then be seized upon by certain EU States and EU Commissioners, who had reservations about Cyprus's accession, as a justification for denying Cyprus EU membership.

THE GREEK CYPRIOT LEADERSHIP'S ATTITUDE AT THE TIME OF THE COPENHAGEN SUMMIT

It is appropriate here to explain the general attitude of the Greek Cypriot side's leadership immediately prior to and at the meeting in Copenhagen even after Annan II had been published on 10 December 2002—accepting, as always, that views were not monolithic. Despite the adverse changes in Annan II, the proposed settlement was finely balanced as between the two sides' interests. It was still subject to negotiation until the end of February 2003, and much improvement was expected in the interval when, for the first time, serious negotiations would commence. Writing as one present at Copenhagen, Annan II would, in

my view, despite the Greek Cypriot side's considerable reservations, even reluctance, and rejection by some members of the National Council, in the last resort have been accepted in order to ensure that Cyprus would be permitted to accede to the EU. But the desire for EU membership alone would not have been the only conclusive factor. As the Plan then stood—and bearing in mind that improvements were hoped for—there were the following positive aspects: there would be a permanent lock on future Turkish (and Greek) immigration, with only small quotas permitted, thus ensuring long-term maintenance of the demographic balance on Cyprus; demilitarisation was to occur, with the numbers of Turkish and Greek troops to be stationed in Cyprus in the interval still subject to forthcoming negotiations between Greece and Turkey;¹ both sides maintained their views on the scope of the Guarantor Powers' rights of intervention, but there had been no assertion in recent years by Turkey that she was entitled unilaterally to exercise this right by military means; the federal structure seemed good enough for EU purposes and a large proportion of issues likely to occasion internal disputes would be decided in Brussels, while there was, at this time, no indication of the extent of the future restricting impact on Foreign Affairs and on the EU competence of the Federal executive due to adopting the Belgian model of Co-operation Agreements (which impact came as a considerable shock in January 2003 when the model was pushed to its limits and was accompanied by support of the UN team for Turkish demands, which were opposed by the Greek Cypriot technical team); there had been no study of the financial implications of the Plan by the UN or by either side, and, apart from the general notion that federations are an expensive form of government and that there would be large expenditures on property compensation for those who did not have their property returned to them, the future burdens were not appreciated by the politicians involved;² the Greek Cypriot side also knew that the Plan permitted long leases of property (on the 1992 Set of Ideas model) and considered, being encouraged in this belief by the UN legal team, that large numbers of displaced persons would retain their property; moreover, they were of the opinion (having obtained expert legal advice from two members of the International Law Commission, Professors Crawford and Hafner) that there were reasonable chances that individuals, whose property rights and rights to return to their homes were interfered with by provisions of the Plan, might

¹ A figure of between 2,500 and 7,000 troops for each of Turkey and Greece was to be inserted in the Additional Protocol to the Treaty of Alliance.

² Regrettably, advice to the Greek Cypriot side ever since 2000 that it was essential to secure expert economic and fiscal reports was not acted upon. Economics is a boring discipline to most politicians and lawyers. Only the late President Kyprianou had the foresight to seek advice from international experts on fiscal federalism. As regards the recent series of talks, it was not until late in 2003 that the Greek Cypriot side requested experts to report. Mr Marcus Kyprianou, then Minister of Finance and son of the late President, asked them not to embark on an exercise pointing out the Plan's deficiencies, but to make constructive proposals to render the Plan workable—an indication that the Government of President Papadopoulos was serious in its desire to negotiate improvements in the Plan.

succeed in claims to the European Court of Human Rights or to the European Court of Justice (the Greek Cypriot side had not concealed its views on that issue, emphasising to the UN, especially in July 2000, that no Cyprus Government could agree to violating individual rights as part of a settlement and that, even if did so, this would be unlawful); the EU *acquis* would prevail over those provisions of the settlement which were contrary to the fundamental principles of EU law since the settlement was not to constitute “primary law” of the EU; although there remained unhappiness about the 30 month transitional period of executive Co-Presidency, it was believed that this would be further modified in negotiations (as indeed it later was at Bürgenstock, because it was in no-one’s interest that the settlement soon collapse); the federal Laws and associated regulations would be modelled on Laws of Cyprus as they were in 1963 (which the Turkish Cypriot side then accepted) or as harmonised by agreement with the EU (and not as they were later to be ie much modified by the UN at Turkish Cypriot insistence); treaties binding Cyprus would be Cyprus’s existing international obligations, since there was not thought to be a State succession³ and there was no conception that any of Turkey’s treaties with the “TRNC” would be adopted; nor was there any conception that the UN would insert provisions—as it did later—interfering with Cyprus’s sovereignty over its waters, continental shelf and air-space; there was no provision reaffirming the UK’s claim to the Sovereign Base Areas by way of an Additional Protocol to the Treaty of Establishment;⁴ and there was hope that the territorial map in Annan II, making the Karpas and certain areas near Morphou part of the Greek Cypriot “component state,” would not be altered in any major respect. Taking all these aspects together, the Greek Cypriot side, doubtless with much hesitation, but nonetheless appreciating that the Plan conferred considerable benefits which Turkey would not earlier have remotely contemplated, would, if put in a position where agreement was necessary to achieve EU membership, have accepted the Plan. Mr Denktash’s rejection however avoided the need to make that choice.⁵ The proof of the likelihood of ultimate acceptance, if necessary, was President Clerides’ dispatch of Mr Markides to be present near the summit

³ An Opinion to this effect was given by two members of the International Law Commission, Professors Crawford and Hafner: see “Legal Position of Cyprus under the ‘Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem’,” 21 November 2002. They concluded that the Plan provision that the “UCR” is a Member of the United Nations made it clear that the State of Cyprus as it would emerge from the settlement would not be a new State nor would there be a succession of States. Had there been a new State, the UCR would have had to acquire UN membership as did Serbia and Montenegro.

⁴ Indeed, the Republic of Turkey at this time was much opposed to reaffirmation of the Treaty of Establishment which provided for the establishment (in UK law) of the Republic of Cyprus and involved the UK in the common defence of the Island. Whenever the Treaty of Establishment was mentioned, as in Article 1.3 of the Foundation Agreement in Annan II, there was much gnashing of Turkish Army teeth.

⁵ Many Greek Cypriots opposed to the Plan as unlikely to be functional described Mr Denktash as “the best Greek Cypriot we have”. Mr Denktash had sent Mr Tahsin Ertuğroğlu, “Foreign Minister of the TRNC”, to Copenhagen. On 13 December 2003 the latter declared that the Plan was so unacceptable that there was nothing to negotiate about.

meeting, with authority to negotiate. The writer does not doubt that, if necessary, Mr Markides was authorised to accept Annan II—although he would not do so in advance, rejecting advice to that effect by Lord Hannay. Nor does the writer doubt that Lord Hannay said to Mr Markides—like other diplomats who advised Greek Cypriot acceptance of earlier UN proposals—that the Plan should be accepted at Copenhagen so as to guarantee its proposals were not worsened and would be finalised as the Greek Cypriot side desired. Certainly Annan II was “the least bad” of the Annan Plans, but it is submitted that any prediction of no worsening if Annan II were accepted would have been falsified, just as were predictions of diplomats giving similar advice in earlier negotiating phases. President Kyprianou had on 12 April 1985 accepted Mr de Cuéllar’s Draft Agreement on Cyprus and Draft Statement by the Secretary-General on the Agreement on Cyprus. However, in March 1986, the Draft Agreement was adapted to meet all Mr Denktash’s and Turkey’s demands. In April 2003, Cyprus agreed to the EU Accession Treaty; in March 2004, the Enlargement Commissioner and the UN insisted that Cyprus’s terms of accession be adapted and that she accept a far worse Plan, Annan V, even threatening a Member State of the EU with dire consequences if she failed to agree to the changed Plan as modified to meet Turkey’s demands. Whether or not such remarks were made by Lord Hannay in Copenhagen, the bait was not taken and that hook of acceptance was avoided. “Worsening” of the Plan was inevitable, so long as Turkey had to be induced to accept it. Thus Greek Cypriot unilateral acceptance of the Plan would not have precluded changes being later demanded by Turkey and the Plan’s overall balance being altered. Indeed, acceptance at Copenhagen would have made subsequent rejection, even with the changes demanded by Turkey incorporated, seem unreasonable. Since the Greek Cypriot side has never accepted the Plan in any version, it remained free to reject it.⁶ Subsequent indication of the Greek Cypriot side’s willingness to accept Annan II did not protect the Greek Cypriot side from adverse changes. In his 1 April 2003 *Report*, para 49, the Secretary-General stated that President Clerides had in late January 2003 indicated to Mr Denktash (in front of the Special Adviser) that, should they not be able to agree on changes by the end of February, “he would be prepared to sign the Plan [Annan II] as it stood”. That did not stop the “worsening” imposed in Annan III on 26 February and 8 March 2003 and the final denouement of Annan V.

⁶ Annan V could thus, conscientiously, be rejected. Even then, foreign commentators supporting the Plan have criticised the Greek Cypriot side, contending that *they would have accepted it at Copenhagen* and could not, properly, change their minds. The facts are that the Greek Cypriot side did not unilaterally accept the Plan there, while nearly all members of the National Council, which regularly met in Copenhagen, were against acceptance, whether unilateral or bilateral. Such commentators also ignore the fact of the massive changes from Annan II to Annan V, mostly to the disadvantage of the Greek Cypriot side, making Annan V, in effect, a very different Plan.