

Possible scenarios in Cyprus: Assuming there is no solution*

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Halted after the Greek Cypriot rejection of the Annan Plan (by 75.83%) at a referendum held on 24th April 2004, inter-communal negotiations restarted on a technical level on 18th April 2008 and on a political level on 25th July 2008. Since then, hundreds of negotiations have been held at different levels between the parties.

The parties have actually agreed on certain issues. However, apparent from the dull statements of UN Secretary General Ban Ki-Moon, the two leaders, who were twice called to Greentree mansion near New York for two days of intensive talks, could not achieve significant progress towards a solution.

Indeed, upon their return to the island, the parties continued to make statements that underlined their failure to reach an agreement and their apparent distance from consensus. Although the negotiations still continue - as of February 2012 it is said that a conference is to be held with the participation of the guarantor states - at the time this article was written, a bi-zonal and bi-communal solution seems farther away than ever before. The parties, especially the Greek Cypriots, continue with the negotiations just to avoid being seen as the one who left the table.

Under these circumstances, Turkey must decide in advance what it will do in case of deadlock - statements demonstrate that the possibility of stalemate has not been thoroughly considered. Turkey has emphasized

that it is going to freeze relations with the EU as of 1st July 2012, when the Republic of Cyprus, which is represented only by the Greek Cypriots, will assume the EU Presidency. During his visit to the United Kingdom, President Abdullah Gül said that both sides of the island should be recognized as two separate states if no solution is achieved.

Beyond that, however, there has been no sign of a comprehensive strategy. Seemingly, Turkey will continue to react to any stalemate with the same old reflexes and it will not consider such deadlock as an opportunity to adopt a new vision. The dispute will be prolonged on the basis of subjective beliefs and recognition/non-recognition issues rather than on legal-political grounds. Social sensibilities will outrun political realities. In reacting, Turkey will harm its own interests, expectations and the international image it has recently gained.

But this is not inevitable. If it wants to, Turkey can adopt a totally different policy and turn the stalemate into an opportunity. Staying within legal frameworks, it can progress a two-state solution. Even if it may not provide a solution to the Cyprus problem itself, Turkey may take a step towards solving the Cyprus problem

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between the EU and itself. And it may establish this step as part of a comprehensive political initiative. Nevertheless, Ankara's first preference should always side with a bi-zonal, bi-communal solution within the framework of UN parameters. The suggestions set forth in this study must be considered as part of a menu that may be put into practice in case of stalemate.

THE ISLAND'S PROBLEM

The Cyprus problem, as we know it today, was first thrust upon the world's political agenda in 1963. The partnership state, which was then three years old, was politically bankrupt as the Greek Cypriots tried to annex the entire island to Greece, and the Turkish Cypriots tried to implement the partition (*taksim*) policy. The inter-communal strife commenced in Christmas 1963.

Beginning from 1961, an underground organization was formed under the leadership of Policarpos Yorgadjis, the then Interior Minister of the Republic of Cyprus, with the aim of rendering ENOSIS i.e. the annexation of Cyprus to Greece. In order to amend the 1960 Constitution, which is still in force but not applicable today, the Greek Cypriots adopted a military and political strategy known as the Akritas Plan.

According to the plan, political turmoil would be triggered on the island, upon which the Greek Cypriots would immediately capture Turkish districts in Nicosia and attack other towns and villages. This entire scheme would

be staged within a few days; thus the process would be completed before the guarantor states of the Republic of Cyprus - the UK and especially Turkey - could react and thus the annexation to Greece would be made possible.

Aware of these developments, the Turkish Cypriots, in turn, were trying to organize their own resistance and keep hold of their legal acquisitions. On 31st November 1963, Archbishop Makarios, President of the Republic of Cyprus, submitted a 13-article constitutional amendment package to Vice President Fazıl Küçük. Guarantor state Turkey rejected the package on 16th December. Inter-communal violence erupted on 21st December.

Four days later, when the Greek Cypriots were about to capture Turkish district in Nicosia, Turkish fighter jets began low level maneuvers on the island. A ceasefire was declared shortly afterwards. However, on 1st January 1964, Makarios announced the unilateral rejection of the Guarantee and Alliance Agreements that assured Turkish Cypriot rights and the 1960 constitution.

On 15th January 1964, a meeting was held with the participation of representatives from both communities with Greece and Turkey as guarantor states. Since then, each and every UN Secretary General has wasted time to find a solution to the Cyprus Problem. Special representatives were assigned to the island. Third parties, mainly the United States, got involved in the problem. A UN Peace Force was positioned between the parties to try to prevent conflict.

But neither the presence of Peace Forces nor the efforts of third parties could prevent an ENOSIS driven coup d'état and Turkey's intervention in July 1974. Negotiations also continued after the intervention on 20th July.

In 1977, the basic parameters of a new partnership, to be established between the community leaders Rauf Denktaş and Archbishop Makarios, were laid out.

It was concluded that the state would be a bi-zonal bi-communal federation, where land would be shared on economic productivity and ownership. Issues such as movement, settlement and ownership would also be considered in line with the requirements of the Turkish Cypriot community and a bi-zonal federation. Accordingly the structure of the central government would prioritize integrity and bi-communality. These principles were also confirmed later in 1979.

However, when the Greek Cypriots attempted to internationalize the solution of the problem, i.e. in the UN General Assembly, the Turkish Cypriots proclaimed the establishment of the Turkish Republic of Northern Cyprus (TRNC) in 1983. In return, the UN Security Council legally ignored the TRNC in Resolution 541. Thereafter, the Greek Cypriots abstained from entering direct talks with the Turkish Cypriots and avoided any step that might be deemed as recognition.

As result of negotiations carried out through the agency of the UN Secretary General Perez de Cuellar and his special representative, the first exhaustive UN solution was presented to the parties on 26th November 1984. Unfortunately, the plan, which was quite similar to the power sharing parameters that are being discussed today, was rejected by the Greek Cypriots.

Spyros Kyprianou, the then leader of the Greek Cypriot Administration and thus the President of the Republic of Cyprus, stipulated that for an agreement to be reached Turkish soldiers must withdraw from the island, those that migrated

to the island from Turkey must return, the Guarantee Agreement be annulled and the freedom of movement, settlement, and ownership be ensured. This position has continued since without significant change, impeding all efforts for consensus.

Nevertheless, negotiations have continued until today. On 10th April 1992, the UN Security Council, through Resolution 750, supported a 100-article set of ideas written by the then UN Secretary General Butros Butros Gali based on his talks with the parties. The Turkish Cypriots accepted 91 articles of the set but the Greek Cypriot party chose to proceed with its EU membership process instead of consensus.

Meanwhile, confidence building measures were also discussed. However the parties had to wait until the Troutbeck meeting, hosted by Kofi Annan on 9-13th July 1997, for the next comprehensive negotiation. On 11-15th August 1997 the parties met again in Gilon. The talks came to a stalemate due to the Greek Cypriot's unilateral pursuit of EU membership. Consequently the Turkish Cypriots, with Turkey's support, espoused stalemate instead of solution.

However, UN Secretary General Kofi Annan continued his efforts towards a solution. Between 1999 and 2003, he met the leaders of the two communities 11 times, and his special representative Alvaro de Sato gathered with the leaders of the Turkish and Greek communities 54 times individually and 72 times in joint forums. Three hundred Turkish and Greek Cypriots as well as 50 UN-assigned technical specialists participated in the negotiations, which resulted in the Annan Plan, a plan of approximately 9,000 pages (including annexes) that brought about a comprehensive solution to all the problems between the two parties.

The plan was so comprehensive, and the third parties were so hopeful, that 1,506 drawings and 111 compositions were evaluated to choose the flag and national anthem of the new partnership state. A balance was sought between almost all the discrepancies between the parties, while the problem of ownership was to be solved based on international law.

In order to arrive at consensus, five different versions of the plan were developed. Its final version also included 1,134 agreements and 131 laws. However, in the referendum held on 24th April 2004 the plan was rejected by the Greek Cypriots, as campaigned for by the then Greek Cypriot President Tassos Papadopoulos. The Turkish Cypriot side accepted the plan (64.9%) but then again found itself punished. The isolation that has been imposed on them since 1964 was not revoked despite all promises to the contrary.

Thereafter the Greek Cypriot side, which became a full member of the EU on 1st May 2004, abstained from restarting the talks and solving the problem within the parameters of the UN for a significant period. So the problem dragged on until today without any solution. Alas, as aforementioned, the solution still seems very far away. Because the Greek Cypriot party, which is now an EU member and whose claim to rule the entire island (despite the *de facto* division being legally accepted), is

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paradoxically acknowledged, feels comfortable with the current situation. On the other hand, the Turkish Cypriots are not ready to make concessions and accept a lesser consensus than what was promised in the Annan Plan.

TURKEY'S PROBLEM

This situation also stands as a serious obstacle in front of Turkey's membership to the EU. The Greek Cypriot administration, acting on behalf of the Republic of Cyprus, is blocking Turkey's membership process with the support of certain EU members that hide behind the Cyprus Problem - mainly France. Whereas membership negotiations were already halted long before this paper was published, we can see that only 13 of a total of 35 negotiation chapters have been opened.

Eight of the remaining chapters were frozen in direct relation to the Cyprus Problem because Turkey failed to fulfill its obligations arising from the Customs Union. With Turkey's obligations arising from the Customs Union and the EU's obligations relating to the continued embargo imposed on the Turkish Cypriots, the relationship has become even more complicated.

Beyond that, Turkey, at the very highest level, has stated that it will not discuss terms with the Republic of Cyprus, which will assume the EU presidency in the second half of 2012, and that it will suspend its relations with the EU unless a solution is reached. While suspension of a practically non-existent relationship may not have significant meaning, when we look at the political results, it would not be incorrect to suggest that such a break will deepen the gap between the two parties.

Turkey is not willing to discuss terms with the Republic of Cyprus because it fears that it will

be forced to give in to the Greek Cypriot claim to represent the entire island. The same concern arose during Turkey's signing of the Additional Protocol to the Ankara Agreement and it laid the ground for the Turkish Parliament's intransigence to not ratify the protocol.

However, neither discussing terms with the Republic of Cyprus, nor acceptance of the Additional Protocol may harm or weaken Turkey's political approach. Above all, when signing the Additional Protocol to the Ankara Agreement of 1963 on 29th July 2005, Turkey, through a 6-article declaration, strongly underlined to the entire world that it did not recognize the Greek Cypriot Administration's sovereignty over the whole of the Republic of Cyprus. On the other hand, with the third article, it declared its recognition of the claim of sovereignty over the territory under Greek Cypriot control.

In other words, Turkey has already declared what it does recognize and what it does not. Turkey recognized the Republic of Cyprus, its claim to sovereignty over the territory under its active control and that the republic in question was controlled solely by the Greek Cypriots. What Turkey did not recognize was the Greek Cypriot Administration's claim to sovereignty over the areas that are beyond its control - in other words, its claim to sovereignty over the Turkish Cypriots, thus over the TRNC. This state of non-recognition was recorded, to which the EU made a counter-statement on the same day.

Secondly, the Additional Protocol does not enlarge the European Union's borders set forth under the Ankara Agreement, but, in accordance with Turkey's demands, it adapts the agreement to the present conditions. According to the protocol signed on 29th July

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2005, the Customs Union area will be expanded. In turn, according to Protocol No. 10 annexed to the agreement that sanctions the Republic of Cyprus' admission to the EU, the TRNC territory is exclusive to the Customs Union area. This arrangement was also made with the aim of preventing Turkey from recognizing the Republic of Cyprus' claims over the entire island.

Thirdly, with a decree issued on 2nd October 2004, Turkey already accepted the Republic of Cyprus, under the name of Cyprus, within the Customs Union area, together with the nine other new members of the Union. Also through statements made thereafter, government officials emphasized that Cyprus-originated goods have entered the Turkish market. What Turkey has not done is to open its seaports and airports to vessels and aircrafts bearing the flag of the Republic of Cyprus.

As it may be known, Turkey closed its seaports to Republic of Cyprus flagged vessels from 14th May 1987 onwards. Additionally, no civil aviation has ever started between the two countries. Turkey defends its decision by noting that the services sector is not included in the Customs Union, while the EU claims that the closure impedes free trade. Turkey's stance is that the issue is irrelevant for the Additional Protocol to the Ankara Agreement. On the other hand, Turkey applies the Additional Protocol already even though it had not approved it.

The fact that Turkey has not opened its seaports and airports to Republic of Cyprus

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vessels and aircrafts arises from an interpretation of the Association Council Decision no. 1/95, which established the Customs Union between Turkey and the EU. The Council is where this difference of interpretation should be revoked. If no solution is reached here, the problem may be carried to the European Court of Justice or Arbitration based on Article 25 of the Ankara Agreement.

Other than its controversial liability arising from the Customs Union, Turkey has no obligation to open its seaports and airports to Republic of Cyprus vessels and aircrafts. If it is required to open its ports due to a decision by the European Court of Justice or Arbitration, Cyprus flagged vessels will only be able to carry goods produced within the Customs Union area in their ports. In addition, according to the Chicago Convention dated 7th December 1944, which regulates international civil aviation, scheduled flights can only be carried out based on an agreement to be signed between the two countries, and the conditions are left to the parties.

With regards to marine transportation, vessels take advantage of innocent passage. However, as stated in the decision of the International Court of Justice on Nicaragua, any permission to enter their ports is accepted as part of a state's right of sovereignty. Even within the framework of the controversial provisions of the 1994 GATT Agreement, Turkey may allow Cyprus flagged vessels to only enter its ports. There is no provision that obligates Turkey to allow Cyprus flagged vessels to discharge their goods.

CONCLUSION: IN DIPLOMACY, SOLUTIONS ARE ENDLESS

As it may be understood from the above discussion, Turkey has diplomatic means that it can use if the Cyprus Problem is left unsolved. Turkey does not need to asymmetrize the problem, threaten by force or use crisis management to solve the problem. What must be done is to legalize the problem, while also fulfilling the obligations arising from the Customs Union.

Fulfillment of these obligations will not harm the political correlation Turkey establishes between its recognition of the Republic of Cyprus' claim to sovereignty over the entire Cyprus island, or lifting of embargoes imposed on Turkish Cypriots, and opening its seaports and airports to Cyprus flagged vessels and aircrafts. Under the Customs Union, Turkey has no obligation to open its seaports and airports to vessels and aircrafts of any state. The issue should be legalized, and primarily brought to the Association Council.

Turkey must also clarify its position on recognition of the Republic of Cyprus. With the declaration dated 29th July 2005, Turkey has recognized the Republic of Cyprus' claim to sovereignty over the territory under the Greek Cypriot Administration's active control. What it had not recognized is the claim over the

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entire island. Turkey has noted that it will recognize this claim when the partnership state will be re-established – in other words when the representatives of the two communities that comprise the island’s population start to live together in a manner similar to that outlined in today’s Constitution of the Republic of Cyprus.

Turkey supports a solution to the problem – indeed there are efforts to solve the problem under the auspices the UN Secretary General’s good offices. But the island is practically and effectively divided. Furthermore, although it is not recognized by other countries, there is a state in the northern half with all its institutions intact. Even the EU sees this truth and supports its solution within the framework of the UN. The fact that it sees the Republic of Cyprus as the only state on the island does not change this reality.

If Turkey clarifies its stance regarding the Republic of Cyprus in parallel with its declaration dated 29th July 2005 and explains what it recognizes and what it does not, it will make the EU-Turkey relationship less strained. On the other hand, simultaneous fulfillment of its obligations arising from the Customs Union will facilitate the provision of international support that may be required for ensuring the consolidation of the status quo in the case of stalemate.

However, it is true that a stalemate in the Cyprus problem will continue to affect Turkey’s affairs with the EU and the USA for many years. Naturally, the first preference should be supporting a bi-zonal bi communal solution. And in case of a deadlock, the facilities provided to Turkey by diplomacy and law should be utilized. In addition, Turkey must also take the necessary steps to demonstrate that it does not keep the TRNC under its active control.

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