



South East European Studies Programme (SEESP)
European Studies Centre

**Getting to Yes :
Suggestions for Embellishment of the
Annan Plan for Cyprus**

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The following report draws on the discussions during a workshop
“Still on the table? The Annan plan and reconciliation in Cyprus”
held at St Antony’s College, University of Oxford,
on 3-4 October 2003.
The list of participants is attached as an annex.

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&



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Introduction

Despite Kofi Annan's commitment to solve the Cyprus conflict and the high expectations it generated on both sides, the latest UN Plan was not signed by the designated deadline of March 10, 2003. Nevertheless, the two sides came closer to a solution than ever before due both to external factors and to the quality and comprehensive nature of the Plan prepared by Alvaro de Soto. Has another historic opportunity been missed? Have we "reached the end of the road" as Kofi Annan declared shortly after the deadlock on the 11th of March?

The organisation of our workshop was based on the presumption that the resumption of talks is likely and that, moreover, this would be based on the Annan Plan. But discussions need to be held in such a way as to not un-ravel the delicate compromises that were struck by the two sides and shaped into a workable political framework by the de Soto team. Section 2 of this report suggests ways in which this could be done.

Of course, the workshop participants took into account the fact that circumstances have changed since March 10th, including through the partial lifting of the restrictions on the Green Line on April 23rd, referred to in our meeting as «Good Wednesday». Naturally, the peaceful exchange of visits does not mean that the two communities can live together – or at least side by side - without the prior safeguarding of some basic constitutional, humanitarian and/or economic rights as spelled out in the UN Plan. But it does lend greater credibility to elements of the Plan which involve deep cooperation between the political classes of the two sides as well as between the peoples themselves.

Since the workshop was held, the December 2003 elections in the north have again changed the backdrop against which the UN Plan must be assessed as the parties in favour of the Annan Plan and EU accession gained a narrow majority and a place in the coalition government.¹

At the same time, the EU, and in particular the Commission, has made it clear that the link between a resolution of the Cyprus question and a positive decision on starting accession negotiations with Turkey at the December 2004 Summit does not lend itself to a bargaining game between Ankara and Brussels, eg «give us EU negotiations and we will resolve Cyprus». Instead, there will be little likelihood of a positive decision on accession negotiations if the Turkish government does not do everything in its power to contribute to a solution in Cyprus by December, and better, much better, by May. As a result, there is now a new and important deadline for reaching agreement within Cyprus: May 1st 2004 when the Republic of Cyprus becomes a member of the European Union. But the UN Secretary General has made it clear that while his Plan remains on the table he will not resume talks unless he gets clear signs of political will from both sides.

We thus offer below a «biased» summary of our workshop discussions which is meant to contribute to supporting such political will. We outline first some of the salient issues discussed and then turn to some of the ideas generated for going forward.

¹ Despite the Opposition Alliance securing a narrow majority of the votes cast, the outcome was in fact indecisive and may lead to splits in the positions of the coalition partners on a settlement. It seems at the time of publication that Mr Denktas remains the de facto negotiator for the Turkish Cypriot community at least until 1 May 2004.

1. The Annan Plan under scrutiny

The basic framework of the Annan Plan - bi-communal, bi-zonal federation - is not new. It was agreed between the leaders of the two communities, accepted by the Security Council and included in Boutros Boutros-Ghali's 'Set of Ideas' in 1992. Nevertheless, the current Plan includes significant innovations, especially the provisions based on the «Swiss model». Indeed, the status of the State of Cyprus and the relationship between this State, its 'common state' government and its 'constituent states', are modelled on the status and relationship of Switzerland, its federal government, and its Cantons (Article 2 of the 'Foundation Agreement'). Furthermore, this Plan aims to be comprehensive so as to leave no political matter unaddressed and no legal vacuum at any phase of the settlement. Most criticisms of the Plan are not about its basic logic but about its "functionality" or practicality, as well as with the extent of civil society participation it encourages.

Institutions : continuity vs new State

On the institutional front, the Swiss model served as the basis for the UN team to bridge the gap between the traditional Greek Cypriot and Turkish Cypriot official views: on the one hand, a settlement as an amendment to the 1960 constitution and the reunified state as the continuation of the Republic of Cyprus (RoC) ; on the other hand, a settlement as an agreement between two pre-existing states freely negotiating a new contract.

In order to reconcile these two divergent visions, the UN Plan cleverly amended the Swiss model with a dose of "constructive ambiguity" through the constitution of the "common state". The institutions of the common state would be organised around two legislative chambers and an executive as follows:

- The Chamber of Deputies has 48 members - at least "one quarter of the seats" for each 'constituent state' - with at least one deputy for each of the Maronite, Latin and Armenian communities. The President of the Chamber of Deputies cannot be drawn from the same 'constituent state' as its first Vice-President and the President of the Senate.
- The Senate, or second chamber, comprises 48 senators - 24 from each 'constituent state'. The President of the Senate cannot be drawn from the same 'constituent state' as the first Vice-President. The Senate elects the six members of the Presidential Council (of whom at least two from the same 'constituent state') from a single list by special majority. A simple majority of the Chamber of Deputies approves it. The members of the legislative (as well as the executive) bodies are elected for a five-year term.
- The Presidential Council, as the executive, is to be headed by a President and Vice-President, who must not be from the same 'constituent state', and who rotate every ten months. There can be no more than two consecutive presidents from the same 'constituent state'. The Council takes its decisions by consensus or simple majority (comprising at least one member of each 'constituent state'). Here again, therefore, cross-community coalitions will be crucial.

In short, the institutional settlement meets the demand of the Turkish-Cypriot side for a real partnership and not a minority status while at the same time reflecting the asymmetry in numbers between the two communities. Moreover, the two chambers

are designed in such a way that achieving a majority in both chambers will be difficult short of intercommunal coalition building. In a Swiss type system each community needs votes from the other community to see its plans pass. It is not quite clear whether the same in-built logic applies to the presidential Council – which perhaps might be one of the only institutional elements of the Plan where there is small room for improvement.

Transition period

The three year transitional period envisaged until the full implementation of the Annan Plan is seen by some as too long and the interim arrangements have been criticised as potentially flawed. During these three years, the “Office of the Head of State (instead of the Presidential Council) shall be vested in the Co-Presidency” (Appendix A, Draft Annex I, article 40). The two ‘communal’ leaders will be Co-Presidents, rotating every month. They will appoint Ministers for the first year and the new Parliament will elect the Council of Ministers for the two following years of the transitional period. This set up seems highly vulnerable to disagreement between the two leaders and may therefore not be optimal in encouraging early steps towards real reconciliation, at least at the highest political level.

Property settlement

Property is the most sensitive issue for most Cypriots, particularly for the Greek Cypriots who abandoned their properties in 1974, and for the Turkish Cypriots who recall having to live in enclaves during the period 1963-1974. The Plan starts from the premise that compensation is the easiest way to solve the property issue, while other doors must remain open – such as leasing – in order to allow for the variety of existing preferences among both former owners and current occupiers. The Plan is designed in such a way as to minimize the number of people who will have to vacate their village or town – if not their actual house or flat. However, there are still some lacunae, including regarding the exact value of the refugees’ properties in the north and the south, despite UN efforts and George Vassiliou's study with proposals (eg figures about returns and properties' claims).² The few surveys that exist disagree on their assessment of numbers of candidacies for actual return as opposed to compensation, exchange or leasing.

Furthermore, the exchange of visits since «Good Wednesday», while affecting such assessments, has not necessarily decreased the uncertainty. Turkish Cypriots seem less worried about a possible return *en masse* of Greek Cypriots to the north as the latter appear to realise the superiority of life conditions in the south. Others, on the contrary, may have become less inhibited in asking for their property back. In addition, the judgement by the European Court of Human Rights in the Loizidou and Cavit cases raises more questions than it solves and underscores the incompleteness of the Plan on the financial aspect of the property issue. Moreover, the fact that Loizidou was in fact paid on December 2003 makes the point of compensation even stronger. Would it be realistic to expect authorities to pay such amounts of compensations? Who is going to pay?

Compatibility with the Acquis

Since the Annan Plan was directly linked with the prospect of a reunified Cyprus entry into the EU in May 2004, there are very few doubts about its overall

² The Economics of the Solution Based on the Annan Plan, September 2003.

compatibility with the *acquis communautaire*. Nevertheless, the Plan includes some infringements of the *acquis* which would need to be negotiated as temporary exemptions, such as the right of residence. Turkish Cypriots generally support these infringements, while Greek Cypriots are divided between those who would like to avoid all of them, and those who believe that they are necessary to reach an agreement. Are some amendments desirable in this vein?

Guarantor powers

Questions can be raised regarding the long term sustainability of the guarantor powers system envisaged by the Plan which leaves Cyprus hostage to political turmoil in guarantor countries, including Turkey, even while becoming a member of the EU. The main constraint is to avoid opposition from Turkey (which stands to reduce its military presence on the island from 35-40,000 troops to 6,000, according to the Plan). Neither Greece nor Great Britain are ready to decide the termination of the system, although the British government has already proposed to reduce the size of its sovereign military bases in case of implementation of the Annan Plan. But the parties are likely to discuss an overhaul in a few years' time.

Settlers and Citizenship

A particularly thorny issue for both communities, but for different reasons, is that of the Turkish citizens living in Cyprus with "TRNC citizenship" - the settlers. Because the number is yet to be decided between the two negotiating sides, most Greek Cypriots seem to see this as no more than an issue of bargaining over figures, the result being necessarily a defeat for their side which has to accept a *fait accompli*. From the Turkish Cypriot viewpoint, the issue is more complicated. Settlers have traditionally been used by nationalist parties to manipulate election results in the north, yet and obviously, not all «settlers» in the north are nationalists. Instead, their votes reflect general divides between left or right or sometimes between religious factions, eg Sunnis vs marginalized Alevis. The second or third generation born in Cyprus are expectedly unwilling to move back to Turkey - and therefore more attentive to citizenship provisions - and Greek Cypriots might agree that it would be unfair to ask them to do so. But could the parties agree on a figure, itself based on agreed criteria? Talks up to now seem to demonstrate that the degree of trust required for such an approach is not there yet. In any case, there is a need especially among Greek Cypriots to acquire a better knowledge of who the settlers are to avoid branding those filling the quota as «second-class» citizens because of their Turkish or non-Turkish Cypriot origins.

2. Why embellishment is a good idea

The Oxford workshop provided strong support for restarting talks within the framework of the Annan Plan on the basis of the so-called «embellishment» technique. This would involve an initial or preliminary agreement between the parties over three principles :

- a) Starting basis:** A great majority of the electorate on both sides wants a settlement and there is no realistic alternative to the UN Plan. Despite its shortcomings, the Plan is the result of careful constitutional engineering, negotiations with the two leaderships (even if not always between them) and

consultations with civil society. The result is a generally balanced and fair document addressing most of the anxieties and fears expressed on all sides, at least to the extent that it is possible to do so without alienating the other side. Thus the document should serve as the sole basis for new negotiations or as the «single negotiating text».

b) Seeking mutual improvements: Nevertheless, there are good reasons to revisit the Plan rather than adopt it *as is*, especially given political developments since March 10 and the fact that neither of the new leaders (Mr Talat and Mr Papadopoulos) now in power on both sides (or in power-sharing arrangement for the Turkish side) were directly party to the prior negotiations. The UN secretariat should encourage parties to propose changes with the following caveat: that the changes proposed by each side improve or “embellish” the agreement for *both* sides. The posture should not be a classic bargaining as this would be likely to simply lead to an unravelling of the whole Plan with demands and vetoes echoing each other. Instead, proposals for embellishment can be based on four types of arguments:

- i) *Change in context:* Specific issues may have arisen since March 10 that may need to be addressed (eg specific points of incompatibility with the *acquis* on the part of the Commission; concept of moral damage on the property front). Even when this is so, the parties must make the case that if some new issue has arisen, it actually would be better to address in the Plan itself rather than through some peripheral agreement at some later point (for instance issues related to the EU could be included in the amended accession treaty when the North joins rather than in the Constitution itself). Also some issues may have been overlooked (such as the issue of treaties binding one or the other side) that have become more apparent, including in the context of confirmed EU accession of the South.
- ii) *Genuine new ideas for amendments beneficial to both sides:* Innovative thinking is not a monopoly of the UN. Since March 10, some participants or observers in this process may have put forward some ideas that both sides may actually find attractive. In this vein, some participants have suggested ways of better sharing the burden of adjustment on the property front. Similarly, the arguments of many of the “constitutionalists” or legal experts, especially on the Greek Cypriot side - those who argue about seeking greater functionality or workability of the settlement - may fit in this category, but the burden of proof is on them. This applies for instance to discussions on the optimal number for membership in the Presidential Council (see below). Clear principles must guide ideas introduced in this category, but of course the catch here is that the problem with any such contracts is how to balance potentially conflicting principles (eg “effective participation of each community”, “decision effectiveness”).
- iii) *New trades between different issues:* Parties may “discover” new linkages or tradeoffs between issues that arise because relative valuation of these issues has changed or some uncertainties about the future have decreased since last March (attitudes to return; number of

settlers). Through direct discussions, parties might discover that some detailed provision of the Plan bothers the other side more than it pleases them and vice versa – this may be especially true in the areas of property and territorial adjustments.

- iv) *Increased ownership*: Finally, a case for changing some provisions may be made simply on symbolic or purely political grounds. The two new governments must be able to “own” the agreement and therefore to leave their own mark on it. Moreover, some civil society groups, while generally highly supportive, are only progressively familiarising themselves with the specific provisions of the Plan and could be made to feel more as stakeholders if provisions were introduced to give them a more explicit role, such as in the areas of reconciliation or education. Increased ownership is particularly important because it takes into account the local sensitivities of those concerned and ultimately helps the dissemination and acceptability of the Plan.

- c) **Fall back**: The attempt at embellishment must be done conditional on a third principle that, if a given amendment or a package proposed by one side is not acceptable to the other side, the parties will fall back on the Plan *as is*. This is to counter the risk of the whole provisional agreement unravelling with parties withdrawing what they see as concessions made in the Plan by their side while their new proposals might be refused. Instead, under this approach, parties engage in seeking embellishment to the Plan in a spirit of constructive improvement rather than zero-sum bargaining. In this spirit, persuasion and deliberation as well as a shared confidence in the overall features of the Plan are key. Both sides must enter the exercise believing that they could live with it as it is – even while they are persuaded that they could make it even better. As one participant put it, the exercise should be about tinkering not tampering.

Examples/suggestions drawn from specific issues discussed at the workshop

Obviously the basic precondition for the success of such an embellishment exercise is for political will to exist on both sides as well as a certain degree of trust that one’s openness to the other side’s proposed changes will not be interpreted as “unilateral concessions”. In the absence of enough trust, external mediation and incentives are crucial including by Greece vis-à-vis Greek Cypriots, the EU/US vis-à-vis Turkey and by Turkey vis-à-vis Turkish Cypriots.

In this spirit of embellishment, workshop participants discussed possible amendments that would not change the nature or the basic principles of the UN Plan but could help make decision makers on the two sides feel that the process was still open to their constructive input while also taking into account the input of civil society.

The territorial adjustment has long been negotiated with both leaderships and its necessity is not questioned. But the actual boundaries of the two constituent states are not yet agreed. Negotiations could come back to the Karpasia Peninsula issue: This region is of great (at least symbolic) value for Greek Cypriots, without having an equal value for the Turkish Cypriots (except in terms of its economic-touristic potential). In this area, there might be a potential embellishment of type 3 with the

possible exchange between the Karpasia Peninsula and the city of Morphou/Güzelyurt (supposed to be part of the Greek Cypriot constituent state in Annan Plan 3). Such a trade would decrease the number of Turkish Cypriots who would leave the city for the territory of the Turkish Cypriot constituent state. Another proposal – of type 2 - is to create two nature parks, under federal protection, Karpasia in the north and Akamas in the south, which would be a tool to re-unite Cypriots under the idea of protecting their common environment and developing a better-quality tourism, compatible with the UN «sustainable development» doctrine.

Property: The Plan is very sophisticated in its effort to reconcile the recognition of ownership with people's desire to stay in their current home; but some adjustments of type 2 may be possible including for instance by making greater use of leasing as a long-time solution. The Guardian of Turkish Cypriot properties in the south would give further information on those properties and facilitate the return of the Turkish Cypriots who would want to come back. It will also be crucial to better explain the provisions of the Plan, for example by creating a trilingual website about this specific issue.

Presidential Council: Some have argued for the need to change its composition from 6 members (of whom at least 2 from the same constituent state) to 9 (with at least 3 from the same constituent state) simply to make the Council work better (type 2 proposal). The rationale for this change applies to both sides: that the Presidential Council would be blocked by an absence of majority (3 vs 3) and that a 9-member Presidential Council would be more conducive to decision making by creating majorities without modifying the 3:1 ratio; that the proposed system would increase the incentive for cross-community coalitions inside the executive. Even if the Council is to be elected on a single list by the Parliament resulting from political and communal alliances further alliance-making should be encouraged. Some counter-argue that such a Council would be too big to maintain collegiality or to find significant portfolio for everyone. Others argue that the question of composition should be linked to the issue of majority threshold (eg two votes from each side necessary). Nevertheless, it would be worth conducting a discussion on principle on this point and potentially linking an amendment here with an amendment on the legislative front (see below).

Legislative bodies: Some participants would like to raise the question of effective participation of each community in this context, including by proposing a decision threshold of 1/4 of deputies from each side. This proposal raises thorny questions such as whether the principle of effective participation should be applied to the Armenian, Maronite and Latin minorities. But it is worth considering.

The Supreme Court and the Central Bank composition and status raise the question of the balance between insiders and outsiders in the new system. Some argue that the latter have too big a role. Could a “rendez-vous clause” to revisit the issue in a few years' time be introduced? (see also below on amendments)

Cross-voting, an idea developed by peace activists for many years, was not considered for the Plan. Yet, it would potentially greatly contribute to enhancing the role of moderate factions in island politics and increasing the fluidity of the new political system on the island. Of course, the right formula should be found to counter the normal effect that cross-voting would have a proportionally bigger effect on the

Turkish side. Perhaps a small group of experts should be asked to make a proposal in this regard.

Amending the Constitution should be made easier, including through referenda. While it is still unclear whether guarantor powers will agree to this, such a change would go a long way in allowing the current leadership on both sides to accept an “imperfect Constitution” if this is one that is not set in stone for the coming decades.

Reconciliation: This aspect of the Plan should be strengthened. The civil society participation terms should be fleshed out, even if, in the Plan, the Commission is already supposed to be appointed by the Secretary-General «after consultation with the two sides and the public». The duration of the Commission should be extended in order to give it the necessary time to do a comprehensive work.

The transitional period could be made shorter in order to avoid potential deadlocks between communal leaders.

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Finally, our discussions also made it clear that not all issues ought to be addressed in the Plan. There were important **pre-settlement** issues. These would include inter alia: considering the unilateral appointment of a reconciliation Tsar; convening public and private reconciliation hearings; working on an overhaul of the teaching of history on both sides; overcoming the legalistic hurdles in order to channel financial support to the North or to trade between the two sides, including with regards to VAT, registration of companies, double taxation or certification of origin where solutions involve trust, cooperation and positive discrimination.

There are also issues linked to the immediate **post-settlement** period that do not lend themselves to a solution in the Plan itself. These include steps towards reconciliation especially in the education system and more generally all the issues requiring cooperation between the two constituent states. On the economic front, high impact projects should be considered very quickly.

In the end, however, while many issues will undoubtedly arise and will be dealt with outside the Plan/Constitution, it may be desirable to provide “hooks” inside the Constitution to the greatest extent possible. The current transition period is thus crucial in order to design the best possible Constitution in a very imperfect world.

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SOUTH EAST EUROPEAN STUDIES PROGRAMME (SEESP)
European Studies Centre, St Antony's College
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The South East European Studies Programme was launched in 2002 as part of the European Studies Centre, St Antony's College, University of Oxford. It focuses on contemporary politics and society in the post-communist Balkans, Greece, Turkey and Cyprus. Drawing on the academic excellence of the College, the University and an international network of associates, this Programme seeks to foster academic and policy relevant research and discussions on the dynamics of post-conflict reconstruction, transition emphasising the role of, and relations with the European Union. In investigating each of these poles as well as their interrelationship, its ambition is to be provocative and constructive.

General Objectives of the Programme

- To support high quality action research on South East Europe with special focus on the politics of long-term EU enlargement;
- To organise conferences, workshops and research seminars;
- To promote a multi-disciplinary study of the region's developments within Oxford University (eg politics, law, sociology, economics, international relations) working in collaboration with students' groups, academics, Centres and Programmes within the University;
- To spearhead exchanges and debates among networks of individuals and institutions beyond Oxford on these issues;
- To foster cooperation between the academic and the policy making community.

Thematic Priorities

- **The Balkan Pillar:** Organisation of brainstorming sessions - between academics, experts and policy makers involved in the region - supported by background research and followed by action papers.
- **The Greek-Turkish Pillar:** Set-up and operation of a Greek-Turkish Network to promote greater mutual understanding on each country's politics and society and their impact on Greek-Turkish and EU-Turkish relations. Analysing developments in Cyprus.

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St Antony's College was founded in 1950 as a graduate college focusing on area studies. The College is the most international of the graduate colleges of the University of Oxford specialising in international relations, economics, politics and history of various parts of the world. The European Studies Centre opened in 1976 to promote the interdisciplinary study of Europe at Oxford.
