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A PROMISE TO KEEP: TIME TO END THE INTERNATIONAL ISOLATION OF THE TURKISH CYPRIOTS

Authors:

MARCEL BRUS, MENSUR AKGÜN,
STEVEN BLOCKMANS, SYLVIA TIRYAKI,
THEO VAN DEN HOOGEN, WYBE DOUMA



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YAYINLARI

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Dış Politika Programı

Foreign Policy Program

Bankalar Cad. Minerva Han No: 2 Kat: 3

Karaköy 34420, İstanbul

Tel: +90 212 292 89 03 PBX

Fax: +90 212 292 90 46

info@teseiv.org.tr

www.teseiv.org.tr

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EDITORS:

**THEO VAN DEN HOOGEN
SYLVIA TIRYAKI
MENSUR AKGÜN**

AUTHORS:

**MARCEL BRUS
MENSUR AKGÜN
STEVEN BLOCKMANS
SYLVIA TIRYAKI
THEO VAN DEN HOOGEN
WYBE DOUMA**

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TESEV's Foreword

This study was written by six researchers from different disciplines and backgrounds. The objective has been to demonstrate that the discrimination against Turkish Cypriots – or, to put it in technical terms, the isolationist policies imposed on Turkish Cypriots – have no legal justifications. The aim is less political than humanitarian, and this is evident in the fact that we have been persistent with the suggestion that Turkish Cypriots should be given back their individual and collective rights.

There is, of course, an obvious political dimension to this as well. This study entails policy recommendations and presumes to play a role in building confidence between the two communities as well as between Turkey and the Greek Cypriots. Any step taken in the direction of lifting isolations unjustly imposed on the Turkish Cypriots is highly likely to boost the trust towards the other side on the island. Needless to say, such a move may also facilitate the upcoming negotiations and cause to bring about the final settlement of the Cyprus problem.

It can also break the deadlock at Turkey's accession negotiations, which have been suspended on eight chapters and blocked in many others. As might be remembered, Turkey had announced with a declaration on 24 January 2006 and established a relationship between the isolations and the sanctions it has imposed on the Greek Cypriots. The Turkish government further claimed with this declaration that if the isolations are lifted, it can implement the clauses outlined in the Association Council Agreement 95/1 for the Greek Cypriots.

Even the most pessimistic political analysts would agree that every step taken towards the lifting of the isolations will help to build confidence between Turkey and the RoC. Such manifest signs of improvement would also attest to how the newly elected administration on the other side of the island has a markedly different understanding and approach to the issue when compared with their previous counterparts. Moreover, it is difficult indeed for us to disregard the positive effects of such a hospitable environment on the negotiation process that has recently started. To summarize, the problem of isolation carries a meaning that goes well beyond the reasoning uttered in this study.

As the authors, we have first started by ascertaining the facts and then moving to examine the situation on the island. We have also outlined what had happened before 1 May 2004 and emphasized the importance of the Annan Plan which, if

accepted, would make this study irrelevant. We have thus explained the grave consequences of this plan and have also taken the time to comment on the adverse effects it might have on Turkey and the Turkish Cypriots. Finally, we have tried to bring to the foreground an understanding of what the isolations imposed on the Turkish Cypriots have meant to them.

However, we should state at the onset that this study is a legal-technical analysis despite its political ramifications. Emphasis has been put on the fact that there is no relationship between isolations and recognition of the TRNC. The message this study tries to convey has nothing to do with the political preference or the international standing of the Turkish Republic of Northern Cyprus. Rightness or wrongness of such a political preference is beyond the limits and intentions of this study.

We repeatedly returned to one argument, to wit, the lifting of isolationist policies on TRNC need not amount to its recognition as a state. If TRNC had been recognized as a state, it is possible that we would not have had to work on the question of isolations in the first place. For, if that were indeed the case, and the TRNC was granted recognition, it would have already been able to exercise its legal international rights. The point we would like to make is that there is no legal barrier preventing other countries from lifting the isolations imposed. We have listed what needs to be done at the end of this report, but we believe that it would be prudent to state them here as well:

- There are no legal obstacles against lifting the ban on direct trade, this ban on
- direct trade should be stopped.
- Since lifting the isolations would not go against the UNSC resolutions 541(1983) and 550(1984), as UNSG Kofi Annan stated in his report to the Security Council, the isolations should be immediately lifted.
- It is legally possible for the international community and for the individual states to give up the isolationist practices without jeopardizing their posture towards binding legal documents such as the reports of the UNSC.
- There is no prohibition under general international law to enter and leave seaports in the northern part of Cyprus.
- International law does not create obstacles *per se* against direct flights, therefore, like in the case of Taiwan, regulations can be expanded to start direct flights to the Northern part of Cyprus.
- It has to be understood that the *de facto* policy of isolation that has been developed is mainly a political choice.

- Lifting the isolations should be seen as a measure that would build mutual confidence towards any settlement attempt between the two communities.
- While putting an end to the isolationist practices directed towards the Turkish Cypriots, the possible solutions for ensuring political equality between the two communities should also be investigated in order to reach a more comprehensive resolution.

We hope that this study will contribute some thoughts towards what we hope will be the eventual lifting of the isolations that have been imposed on the Turkish Cypriots for many years. At the same time, however, we as TESEV are aware that it will not be easily possible to lift the isolations nor will the Greek Cypriots leave the position they have as the sole representatives of the RoC willingly or that some EU member states will not stop hiding behind the Cyprus problem to legitimize their political position vis-a-vis Turkey's EU membership.

We are also aware that some may dismiss our recommendation on the basis of timing. They may claim that our broaching of the subject of lifting isolations is an ill-timed exercise as the negotiation process has only recently been resumed. According to these skeptics, we will only help to ruffle up some feathers and thus may "disturb" the Greek Cypriot side. But we as TESEV believe that the time has never been riper. This is indeed the time for reconciliation and peace building.

Needless to say, many people have spent much time and energy towards readying this study. Almost everyone in the TESEV Foreign Policy Program has contributed to the realization of this project. Sabiha Senyücel, Sanem Güner, Özlem Gemici and Aybars Görgülü have contributed a good amount towards the actualization of this study. For the editing we are thankful to Nicholas Danforth and Rishad Choudhury. But the majority of the input has come from Ceren Zeynep Ak. She has been actively engaged with this project from the beginning till the end.

During this project we have also had help from many people outside of TESEV. Among these, the first person that comes to mind would be Hester Menninga, who had helped us with the meeting venue at the Dutch Senate. Moreover, we are also thankful to Theo van den Hoogen for the immense support he has given to the whole group. Without them, we would not be able to work with the same degree of enthusiasm.

I believe we should also thank the Turkish Cypriots who have shared their knowledge and experience with us during our study trips and also helped us obtain the information that we used in this publication. We would like to thank here TRNC President Mehmet Ali Talat, Minister of Foreign Affairs of the TRNC Turgay Avcı, Assist. Prof. Dr. Kudret Özersay from Eastern Mediterranean University, former

Minister of Foreign Affairs of the TRNC Serdar Denктаş, former under-secretary of the TRNC Foreign Affairs Ministry Kudret Akay, Mete Hatay and Ayla Gürel from PRIO, attorney Emine Erk, businessman Erdil Nami but particularly Özdil Nami, member of the TRNC Parliament.

There are also people from Turkey that we would like to thank. Among these, the first that comes to mind is Can Baydarol and Prof. Dr. Işıl Karakaş, former scholar of Galatasaray University and currently a judge at the ECHR.

Last but not the least, we want to thank to ABIG, OSI and the High Advisory Board of TESEV for their financial support. As it became a well established custom and practice we should also state that the views expressed here does not necessarily correspond with the views of TESEV, although some of the authors are its employ.

Mensur Akgün

Foreign Policy Director
TESEV



Executive Summary

A PROMISE TO KEEP: TIME TO END THE INTERNATIONAL ISOLATION OF THE TURKISH CYPRIOTS

Since the rejection of the Annan Plan by the Greek Cypriots on 24 April 2004, not much has been accomplished pertaining to the overall settlement of the Cyprus conflict. Although progress could not be sustained towards a comprehensive solution on the island, the EU accession process for the Republic of Cyprus (RoC) continued in its normal course and the RoC has since become an EU member state. These developments took place in spite of the legal problems this membership posed for the European Union itself.

The objective of writing this report has been twofold, namely, to assess the legal validity of the continuing international isolation of the Turkish Cypriot community, and to demonstrate that lifting the isolation currently imposed on Turkish Republic of Northern Cyprus (TRNC) will not necessarily amount to – or require – its recognition as a nation-state. This report asserts that the isolationist policies directed towards the Turkish Cypriots living in the Northern part of the island do not have any legal basis and therefore should be revoked immediately. At the same time, it should be noted that this study does not only emphasize the political and economic impacts of the isolation but also the humanitarian dimension thereof.

The point of departure for the study is to call on the fact that the EU membership of the RoC created a unique status for the Turkish Cypriot community, under both international and EU law. In the first part of the report, two concepts that are often used as inseparable from each other – non-recognition and isolation – are discussed in light of the changed circumstances after 1 May 2004. Within the framework of international law, recognition of states is clearly distinguished from international isolation both in political and legal terms. Although recognition has a specific meaning within international law, often regarded as a constitutive element in the creation of a new state, isolation does not relate to a particular meaning, be it political, legal, economic, cultural or otherwise. Non-recognition, on the other hand, refers to the situation in which states collectively adopt a policy which seeks to diplomatically distance them from another state. In such a situation, the states are expected to pursue that policy. For that matter, non-recognition will lead to the isolation of the entity, as the non-recognized entity's participation in the international community will become very difficult.

In the case of the TRNC, after the declaration of the Turkish Federated State of Cyprus in 1975, the international community expressed regret and concern by adopting the Security Council Resolutions that this might compromise the negotiations between the two communities and the implementation of UN resolutions. However, since then, no further action was taken. As further stated in the report, the main concern had to do with Turkey's intervention in 1974, but neither then nor later, did this intervention lead the Security Council to adopt resolutions calling for economic or other sanctions against Turkey or the Turkish Cypriot community. When the TRNC was finally proclaimed as a self-governing body in 1983, the Security Council adopted a policy of non-recognition of the TRNC as a new sovereign state. The report argues that the non-recognition of the TRNC on the basis of Resolution 541 does not imply isolation of the Turkish Cypriot community. Therefore, without further Security Council resolutions expressing a view on the acceptability of maintaining trade or other relations with the Turkish Cypriot community, it is difficult to come to a conclusion that an obligation to isolate this community economically or otherwise has in fact been adopted under international law.

In the context of EU law, it is stated in the report that EU Treaty opens up the possibility to interrupt or reduce, in part or completely, economic relations with a third state. Article 301 of the EC Treaty entitles the Council to take the necessary urgent measures following a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy. Among the existing EU sanctions regimes, there are only measures affecting trade of goods and services and/or the free movement of capital. However, the EU did not use any of these options while dealing with the TRNC.

The study also gives a detailed historical analysis of the isolation, referring to how the isolationist policies were implemented in the beginning and what changed after the RoC's accession to the EU. It is claimed by the authors that during the first phase, which began in 1963, after the collapse of the RoC as a bi-communal partnership State, the isolation of the Turkish Cypriots did not have an international character. Rather it was the consequence of the unilateral decisions of the Greek Cypriot government that subjected the Turkish Cypriots to political, social and economic hardship. The economic sanctions towards the Turkish Cypriots lasted until 1968 and, according to the authors, these economic sanctions added to the already existing physical segregation of the Turkish Cypriot community while severely hindering economic development on the Northern part of the island.

The second phase begins with Turkey's intervention in 1974 and a de facto division of the territory on the island. Apart from Greece, which joined the government of the RoC in the imposition of economic and political embargoes on Northern Cyprus, the rest of the global community refrained from announcing restrictive measures. The

only response from the international community was a call for the non-recognition of the newly created statehood. The authors argue that another turning point had been the ECHR decision in 1994, the Anastasiou case, which banned trade between the EC and Turkish Cypriots. The report concludes that the measures of isolation taken towards the Turkish Cypriots since the 1960's have resulted in the exclusion of the Turkish Cypriots from the international economy. It is claimed that the judgment of the ECJ had the effect of creating an official international economic embargo towards the Turkish Cypriots even though neither the international community, nor the EC or any other international body ever called for such measures. Although the increased isolation of Northern Cyprus resulting from the ECJ decision was apparently accepted by the Union's member states as they have not adopted any contrary policy, the developments since 2004 indicate that they are now willing to end the de facto isolation.

When it comes to the political isolation of the Turkish Cypriot community, the authors first take up the issue of representation. It is stated that after the RoC entered the EU, there were no forms of political representation of the Turkish Cypriots in the EU institutions. With the failure of the Annan Plan, the subsequent EU accession of the RoC brought the Greek Cypriots into the Union and left the Turkish Cypriots out. Therefore the only legal recourse left to the EU was the recognition of the RoC and the Greek Cypriot government as the only legitimate authority in Cyprus. According to the authors, the continuation of the legal status *quo ante* seriously complicated any effort to develop forms of political participation for the Turkish Cypriots in the EU policy-making system. The suspension of the *acquis* in Protocol 10 does not exclude Turkish Cypriots living in Northern Cyprus from EU citizenship rights, as long as activities under these rights are not linked to TRNC territory. Therefore, as EU citizens Turkish Cypriots are fully entitled to benefit from, *inter alia*, the four freedoms of the EC Treaty outside TRNC area.

With regards to the representation problem, as EU citizens, Turkish Cypriots who reside in the TRNC have the right to be represented in EU institutions. However, they can not exercise this right since all institutional rights are exclusively reserved for the RoC, the only recognized state in Cyprus. The European Union is at this point confronted with a dilemma. On the one hand, it can not deny basic democratic rights to the Turkish Cypriots who are also European citizens, on the other its own regulations prevent these rights from being put into practice.

According to the authors, one way to conciliate this dilemma would be to create forms of political representation for Turkish Cypriots which can be implemented without violating the suspension clause of Protocol 10 and the EU's non-recognition policy towards the TRNC, while at the same time providing an effective voice to the Turkish Cypriots in EU public policy making. Under the present circumstances the

introduction of some form of observer status for Turkish Cypriot representatives in the European Parliament might be a useful option. Another option as stated in the study would be granting observer status to the Turkish Cypriots in the Council which would also help to prepare them for full integration into the EU after a settlement of the Cyprus conflict. Finally, the authors state that elected representatives of the Turkish Cypriot community can be invited to plenary sessions and committee meetings or only to the Parliamentary committee meetings when matters which are also of concern to the Turkish Cypriots are discussed.

Pertaining to the economic isolation of the Turkish Cypriots, there are two urgent and sensitive issues that are examined in the report: transportation and direct trade. The transportation problem includes a. access to seaports and b. direct air links. It is claimed in the study that when a state no longer exercises control over part of its territory, it can not maintain that it has the power to exercise some of its sovereign rights. Access to ports of the territory it no longer controls will have to be regarded as a matter of regulation by the new authorities exercising the de facto control over the territory. The RoC thus can not close seaports it does not control. When it comes to direct air links, the authors suggest that usually states conclude bilateral or multilateral conventions with the purpose of regulating regular air services in line with the Chicago Convention. The TRNC is not a party to the Chicago Convention. The Chicago Convention is thus not applicable to Northern Cyprus. However, as in the case of Taiwan, states have found many pragmatic solutions to ensure safety and security. This was done without recognizing Taiwan as a state or compromising the People's Republic of China as a state party to the Chicago Convention. The authors suggest that similar arrangements can also be made for Northern Cyprus without jeopardizing the Security Council resolutions. The Northern Cypriot ports are legal under international law, as it has also been affirmed by the EU. To establish direct air links between Northern Cyprus and other states might pose some technical difficulties but international law does not create obstacles *per se* against such direct flights.

For the issue of direct trade, the authors direct the reader's attention to how the EU developed two instruments to help the economic development on the northern part of the island: The Financial Aid and Direct Trade Regulation. The Green Line Regulation, on the other hand, seeks to enable Turkish Cypriots to sell their products in the South and to export to EU markets through the ports and airports of the RoC. The regulation also provides for a mechanism to control the flow of persons and goods that enter the EU customs area. The report argues that the EU Green Line Regulation has not reversed the steep decline in trade with the European markets after the Anastasiou ruling of the ECJ in 1994. Moreover, at the time of the enactment of the Green Line Regulation, most observers had estimated that its effect would be too limited to overcome the isolation of the Turkish Cypriot Community. Therefore

the authors strongly assert how its function has remained very limited and can not be considered as an equivalent for or alternative to the Direct Trade Regulation.

As stated above, the Green Line Regulation is not and has never been intended to be an effective instrument for ending Northern Cyprus' economic isolation. It is claimed that a partial remedy for this deficiency was envisaged in two additional regulations, the Financial Aid Regulation and the Direct Trade Regulation. These regulations were proposed by the Commission as 'twin' instruments, meaning that they were to be adopted as one package as soon as possible. In light of the fact that direct trade is essential for economic development, preventing direct trade effectively equals to precluding the Turkish Cypriots from economic development, and is thus in conflict with the spirit of the key provisions of EU primary law.

In conclusion the authors assert that the *de facto* policy of isolation imposed on the Turkish Cypriots is a result of political decisions. Neither has international law ever imposed economic sanctions on a non-recognized entity nor has the international community ever adopted sanctions against the Turkish Cypriots. Moreover, it is emphasized that no effective measure has been taken so far by the international community and the EU to lift the isolation, despite promises made after the referenda in 2004. According to the authors, although the most commonly spelled out concern has been an argument of recognition of the TRNC, it is legally possible for the international community and for the individual states to give up the isolationist practices without jeopardizing the UNSC resolutions. The authors finally state that the Turkish Cypriots have not yet had the chance to benefit from the EU membership despite the founding principles the Union has embraced.

With respect to what has been written in this report, it is concluded that the isolation of the Turkish Cypriots is not legally sustainable.

After the disappointing result of the 2004 referenda the then Secretary-General of the United Nations, Kofi Annan, called for the elimination of measures which led to the isolation of the Turkish Cypriots. In his words:

“In the meantime, I believe that the members of the Council should encourage the Turkish Cypriots, and Turkey, to remain committed to the goal of reunification. In this context and for that purpose and not for the purpose of affording recognition or assisting secession, I would hope they can give a strong lead to all States to cooperate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development, deeming such a move as consistent with Security Council resolutions 541 (1983) and 550 (1984).”

In this statement, Kofi Annan prompted the international community to rethink and reformulate their policies towards the Turkish-Cypriot community. In one sentence he expressed that in his view states should eliminate *unnecessary* restrictions isolating the Turkish Cypriots and that such elimination of restrictions would not go against the relevant Security Council resolutions. Debate on the scope of the measures required to implement the international non-recognition policy has never been completely absent since the proclamation of the TRNC in 1983 and the adoption of the Security Council resolutions. However with the apparent change in the attitudes of the Turkish Cypriot community on the future of a united Cyprus, the need to solve relevant questions has become more pressing and at the same time more intricate. Moreover, the accession of Cyprus to the European Union has added another unique dimension to the already complex situation.

1. Introduction

On 24 April 2004, the decades-old Cyprus problem defied yet another settlement attempt. An elaborate plan prepared by the UN team was rejected by the Greek Cypriots despite the unprecedented scale of the UN effort. As stated in another TESEV report, during the phase before March 2003 alone, Kofi Annan himself met the community leaders on 11 occasions.¹ His Special Advisor on Cyprus, Alvaro de Soto, hosted 54 separate meetings during the proximity phase, 72 meetings in direct format, and called on each leader on more than 100 occasions during the entire period.

Annan's Special Advisor made around 30 trips to Greece and Turkey, dozens of trips to the capitals of Security Council members, the European Commission in Brussels, and European Union member states.² In total, almost 300 Greek Cypriots and Turkish Cypriots were involved in the technical discussions full time, supported by a team of some 50 United Nations experts. The team was assisted by input from throughout the United Nations and the EU. A number of countries were on standby, ready to send experts to assist in the technical finalization of the process. A total of 1,506 flag designs and 111 potential anthems for the United Cyprus Republic were recommended.³

The outcome of the effort was a long comprehensive document dealing with all the issues in the conflict and providing the necessary legal instruments for resolving all matters concerning governance, law and property, as well as measures for lifting the isolation imposed on the Turkish Cypriots. The proposal took into account the positions of both parties, which were deeply divided on all the main issues.

The 5th and final version of the plan, together with 131 completed laws, runs to 9,000 pages, accompanied by 1134 treaties signed by both parties. A series of detailed recommendations on the economic and financial aspects of the plan and their implementation, the organizational charts of the federal government, comprising 6181 positions and a list of buildings on each side to house the federal government during a transitional period were also produced.⁴

1 Mensur Akgün, Ayla Gürel, Mete Hatay, Sylvia Tiryaki, *Quo Vadis Cyprus*, Istanbul 2005.

2 Ibid.

3 See also the Report of the Secretary-General to the Security Council S/2004/437, "On his mission of good offices in Cyprus", New York 28 May 2004, <http://www.un.org/docs/sc/sgrepo4.htm>.

4 Ibid.

Yet the plan was rejected on 24 April 2004 and since then there has not been any serious attempt by the UN to settle the problem. Parties seem to drift further apart and a comprehensive settlement now seems to be further away than ever. It is not clear at the time whether Dimitris Christofias, who was elected as the new president of the Republic of Cyprus (RoC) intends to negotiate a compromise with the Turkish Cypriots based on the same principles which were overwhelmingly rejected by the Greek-Cypriot people in April 2004.

The Turkish Cypriots have been living in a limbo for a long time now, suffering from the consequences of the Greek Cypriot defiant attitude and the impotence of the EU to fulfill its promises. Moreover, the RoC's admission to the EU without the settlement of the Cyprus problem complicated Turkey's accession process as well. The Turkish Government has not allowed the RoC flagged vessels and airplanes to land or dock at its ports and airports, fearing a domestic reaction over the allegations of recognition of the Greek Cypriot administration's jurisdiction over the entire territory of the 1960 Cyprus Republic.

Many in Turkey seem to believe that complying with the Customs Union requirements amounts to the unrestricted opening of the ports and airports to the RoC flagged vessels and airplanes. They claim that the opening of ports and airports would not only entail recognition but would also amount to providing a financial subsidy for the Greek side of the island, as their ships would be carrying cargo to and from Turkish ports while Turkish Cypriots suffered from the consequences of political and economic isolation.

Soon after the EU enlargement of 2004, the Turkish Government extended the scope of the Customs Union territory firstly to 9 member countries and later to 10. After protracted negotiations, a protocol extending the Customs Union to the 10 new member states was signed by Turkey and the European Commission on 29 July 2004. Turkey also attached a six-point declaration on the non-recognition of the RoC's jurisdiction over the territory controlled by the Turkish Cypriots.

In the meantime, the issue was further politicized and went beyond the concerns over recognition. Responding to public opinion, the Turkish government declared that ending the international isolation of the Turkish Cypriots is a pre-condition for opening its ports and airports to the RoC flagged vessels. Ankara put forward a formal proposal on 24 January 2006 according to which it would open up its ports, airports and airspace to Cypriot ships and planes under the condition that the isolation of the Turkish Cypriots be lifted.

Although EU Enlargement Commissioner Olli Rehn welcomed Turkey's proposals as "a basis for further discussion with the concerned parties under the auspices of the United Nations", he reiterated the call for Turkey to meet its commitments set out in

the new protocol signed on 29 July 2005 by lifting the ban on Cypriot-flagged vessels and aircraft.

On 29 November 2006, the Commission announced that since Turkey had not fully implemented the Ankara Protocol by continuing to impose restrictions to the free movement of goods, a recommendation was adopted in preparation for the General Affairs Council on 11th December suggesting that eight chapters be suspended in Turkey's accession negotiations.⁵ Referring to the popular metaphor of the time, Rehn claimed that there would be no "train crash" but a slowing down in accession negotiations.

On 11 December 2006, the General Affairs Council recalled the September 21 declaration (2005) of the European Community and its Member States and noted that Turkey has not fulfilled its obligation of full non-discriminatory implementation of the Additional Protocol to the Association Agreement. The Council welcomed the Commission's recommendation on 29th November and agreed in that context that "the Member States within the Intergovernmental Conference will not decide on opening the chapters that cover the policy areas relevant to Turkey's restrictions regarding the Republic of Cyprus, until the Commission verifies that Turkey has fulfilled its commitments related to the Additional Protocol".⁶

At the time of writing, negotiations with Turkey are still suspended on eight chapters, no tangible progress has been achieved with respect to the settlement of the Cyprus problem and as we discuss in other parts of this report, no visible steps to address the concerns of the Turkish Cypriots have been observed. In other words, Turkey's call for a mutually satisfactory settlement for the problems relating to the Customs Union and the Cyprus conflict itself have not been reciprocated. As a consequence, the ports and airports are still closed to the RoC flagged vessels and airplanes.

We do not believe that the current state of affairs is politically sustainable for Turkey, EU, or both communities in Cyprus. However, lifting the isolation of the Turkish Cypriot community is conducive to the settlement of the Cyprus problem. The problem may defy yet another UN attempt. Neither Turkey's accession nor the Turkish Cypriots' isolation should be held hostage by the Cyprus problem. One has to find new remedies, and suggest new recommendations on the basis of political and legal principles. The analysis, conclusions and recommendations in the following parts of our study are based on these normative foundations and assumptions.

5 The suspended eight chapters are: Chapter 1: Free Movement of Goods, Chapter 3: Right of Establishment and Freedom to Provide Service, Chapter 9: Financial Services, Chapter 11: Agriculture and Rural Development, Chapter 13: Fisheries, Chapter 14: Transport Policy, Chapter 29: Customs Union and Chapter 30: External Relations. See Council conclusions of 11 December 2006, doc. 16289/06 (Presse 352), at 9.

6 See Council conclusions of 11 December 2006, doc. 16289/06 (Presse 352), at 9.

This study aims to assess the legal validity of the continuing comprehensive isolation of the Turkish Cypriot community. In the first part, we analyze its historical dimension as it is almost always assumed that the isolation is a result of Turkey's intervention in 1974. But before doing that we discuss the presumed link between isolation and non-recognition. In the second part of the report, we elaborate on the role played by the EU in the continued political and economic exclusion of the Turkish Cypriots after the accession of the RoC in May 2004. In part three we summarize the main conclusions of our investigation.

We need to emphasize at the outset that the isolation of the Turkish Cypriots has more than one dimension, and its political and economic impact should not only be seen in communal terms but also in terms of individual rights. Quoting the words of Turkish Cypriot Human Rights Foundation: “[Isolation] doesn't affect just the businessman trying to trade, but also the Turkish Cypriot teenager in the folk dance group, the young graduate or politician trying to make a career in the EU, the university student, the artist and even the Turkish Cypriot footballer (who could not participate in international contests).”⁷

7 Turkish Cypriot Human Rights Foundation, *The Turkish Cypriots: The Excluded EU Citizens, North Cyprus: 2006*, pp.5-6.

Part I

The Isolation of the Turkish Cypriot Community: International Legal and Historical Aspects

The EU membership of the Republic of Cyprus, represented only by the Greek Cypriots, created a unique legal status for the Turkish Cypriots, both under international and EU law. This legal status, or rather legal fiction, is accompanied by an international isolation of the Turkish Cypriot community which continues in spite of the change in the circumstances that arose in the aftermath of the simultaneous referenda on the federal future of the island in 2004.⁸

Part I of this report starts with an investigation of the two concepts which are often used in political debates on the isolationist practices against the Turkish Cypriot community: non-recognition and isolation. In chapter 2 we will look at these concepts from the perspective of international law theory and the practice of international organizations, including the EU.

This is followed, in chapter 3, by a short history of the isolation of the Turkish Cypriots, which is considered here as an integral part of the history of the Cyprus conflict. The process of isolation towards the Turkish Cypriots started back in 1963/64 as part of an embargo policy of the Greek Cypriot-run Republic of Cyprus and gained its international dimension at a later stage.

1.1. NON-RECOGNITION OF THE TRNC AND THE INTERNATIONAL ISOLATION OF THE TURKISH CYPRIOT COMMUNITY FROM THE PERSPECTIVE OF INTERNATIONAL LAW

After the disappointing result of the 2004 referenda, the then Secretary-General of the United Nations, Kofi Annan, called for the elimination of measures which led to the isolation of the Turkish Cypriots. In his words:⁹

“In the meantime, I believe that the members of the Council should encourage the Turkish Cypriots, and Turkey, to remain committed to the goal of reunification. In this context and for that purpose and not for the purpose of affording recognition or

8 For a more detailed analysis see Kudret Özersay, *Separate Simultaneous Referenda in Cyprus: Was it a “Fact” or an “Illusion”?*, Turkish Studies, Routledge, September 2005, Vol.6: No.3.

9 See the Report of the Secretary-General to the Security Council S/2004/437, paragraph 93.

assisting secession, I would hope they can give a strong lead to all States to cooperate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development, deeming such a move as consistent with Security Council resolutions 541 (1983) and 550 (1984).”

In this statement, Kofi Annan prompted the international community to rethink and reformulate their policies towards the Turkish Cypriot community. In one sentence he expressed that, in his view states should eliminate unnecessary restrictions isolating the Turkish Cypriots and that such elimination of restrictions would not go against the relevant Security Council resolutions.

This statement shows a masterly use of diplomatic language, but in itself does not solve one of the major dilemmas which states face when considering their attitude towards Northern Cyprus: To what extent does international law allow entering into relations with Northern Cyprus, without encroaching upon the policy of non-recognition of the Turkish Republic of Northern Cyprus (TRNC) as demanded by the Security Council? In other words, how much freedom of action does a state have in its dealings with Northern Cyprus if it does not want to directly or indirectly recognize the TRNC?

Debate on the scope of the measures required to implement the international non-recognition policy has never been completely absent since the proclamation of the TRNC in 1983 and the adoption of the Security Council resolutions. However with the apparent change in the attitudes of the Turkish Cypriot community on the future of a united Cyprus, the need to solve relevant questions has become more pressing and at the same time more intricate. Moreover, the accession of the RoC to the European Union has added another unique dimension to the already complex situation.

The questions that arise are partly of a political and partly of a legal nature. Especially in the field of recognition and non-recognition, it is extremely difficult to keep the two aspects separated.

RECOGNITION, NON-RECOGNITION AND ISOLATION IN INTERNATIONAL LAW

Recognition of states (and of governments) has to be clearly distinguished from isolation, both in political and legal terms. When speaking of recognition in international law, it is first of all necessary to make a distinction between recognition of states and recognition of governments. Although recognition of governments is also an issue in the context of Cyprus,¹⁰ this will not be discussed in this report. The recognition, or rather the non-recognition, of the TRNC as an independent state is at issue here.

¹⁰ This concerns the international recognition of the Greek Cypriot government as the only legitimate government of the Republic of Cyprus.

State recognition is a complicated legal concept. It can take many forms and can have many purposes, both domestic and international. Recognition of a state is used in a 'declaratory' manner to express one state's acceptance of the coming into being of a new state and its willingness to enter into official relations with that state, but it may also at times be considered as a constitutive element in the creation of a new state.

The act of recognition is then regarded as an element of acquiring status as a new state.¹¹ As this report deals with the question of the non-recognition of the TRNC, it is not necessary to go into details on the many aspects of recognition. Suffice it to say that in general, states enjoy wide discretion to recognize or to not recognize a new entity that claims to be a state.

Isolation, be it political, economic, cultural or otherwise, is an entirely different concept that does not have a particular meaning within international law. A policy of isolation towards a particular entity can be adopted by individual states, by a group of states or by the entire community of states to express their disapproval of the nature or the acts of the entity in question.

This entity can be an existing state, the government of such a state, a territory claiming to be a new state, a non-state actor, like a rebel group in a civil war, a terrorist or criminal organization, *et cetera*. A policy of isolation can become a part of public international law when specific measures to isolate a particular state, regime or organization are expressed in a legally binding manner.

A policy of isolation can be the result of: (1) a binding resolution of the Security Council or of an organ of another international organization, (2) obligations following from a treaty in existence for a particular state or a group of states, (3) a binding *ad hoc* agreement between states to isolate a particular state or entity or (4) customary international law.

Recognition is predominantly about the perceived international legal status of an entity; a policy of isolation is a coercive measure or sanction against an entity with the intention to make it change its behavior. Although recognition is a discretionary act of states, in some circumstances customary international law, specific treaty obligations or Security Council decisions may require states to follow a policy of non-recognition. In the case of the TRNC, Security Council resolutions considered below play a dominant role.

11 For more see *Oppenheim's International Law*, R.Y. Jennings and A.D. Watts eds., 9th ed., London, 1992, Vol. 1, pp. 126-204; M. Shaw, *International Law*, 5th ed., Cambridge, 2003, pp. 367-408; S. Talmon, *Recognition of Governments in International Law*, Oxford, 1998; J. Dugard, *Recognition and the United Nations*, Cambridge, 1987; S. Talmon, *The Constitutive versus the Declaratory Theory of Recognition: Tertium Non Datur?*, 75 *The British Year Book on International Law*, 2004, 75, pp. 101-182; I. Brownlie, *Recognition in Theory and Practice*, 53 *The British Year Book on International Law*, 1982, pp. 198-211.

For the purposes of this report, the term ‘non-recognition’ refers to a situation in which states adopt a policy of non-recognition collectively, and are expected, to pursue that policy. Where reference is made to ‘not recognizing an entity’ or to ‘an entity not recognized’ by a state, this refers to the exercise of the discretion of a state to define its position vis-à-vis other entities claiming to be states.

Non-recognition can have two distinct aims: (1) it can be a collective response to a newly constituted entity to demonstrate international disapproval of that entity’s activities (e.g. a policy of racism), or of the manner in which it was constituted (e.g. a violent overthrow of a democratic government without violating an international legal norm), (2) it can be an attempt to preclude legitimizing a situation created in violation of fundamental international legal norms.

In both cases non-recognition will lead to the isolation of the entity (fully or partially), as non-recognition will make the non-recognized entity’s participation in the international community difficult. However, the effect of the decision of non-recognition is in principle limited to the official contacts between states and the non-recognized entity, such as diplomatic representation, the conclusion of international agreements, the granting of state immunity in domestic law or the acceptance of acts of the authorities of the entity as official acts of a foreign state.¹² If the international community wishes to go beyond these effects of non-recognition, it should take explicit decisions with the intention to isolate the entity, such as economic sanctions, severance of communication links, or travel restrictions against specific representatives of the entity.

As non-recognition has only been applied in a few cases, there is not much precedent in international law to determine the exact scope of the legal obligations of states in such a case. It will be necessary to carefully analyze the particular situation of the policy of non-recognition adopted by the Security Council in the case of the TRNC, in order to assess which restrictions are legally required in contacts with Northern Cyprus and what kind of activities are allowed. This will be done in the following sections.

THE NON-RECOGNITION OF THE TRNC AFTER 1983

Events in the 1970s led to the 1975 declaration of the Turkish Federated State of Cyprus. The response of the international community in the form of Security Council resolutions was to express regret and concern that this might compromise the negotiations between the two communities and the implementation of UN

¹² However, in Oppenheim’s international law it is argued that even a limited bi-lateral treaty would be possible without any recognition. *Supra* Note 3, pp. 170.

resolutions. However, no further action was taken in this regard.¹³ The main concern was related to Turkey's intervention in 1974, but neither then nor later, did this intervention lead the Security Council to adopt resolutions calling for economic or other sanctions against Turkey or the Turkish Cypriot community.

When the TRNC was proclaimed in 1983, the Security Council adopted a policy of non-recognition of the TRNC as a new sovereign state. In Resolution 541 (1983), it considered the declaration as legally invalid and called upon all states "not to recognize any Cypriot State other than the Republic of Cyprus".¹⁴ Until today, no state but Turkey has recognized the TRNC as a sovereign state. However, non-recognition of the TRNC on the basis of Resolution 541 does not imply isolation of the Turkish Cypriot community. Economic, cultural, or scientific exchanges would still be acceptable, as long as these would not imply recognition of the TRNC.

In 1984, the Security Council condemned in Resolution 550 all secessionist activities and reiterated its call upon states not to recognize the new entity. Moreover, it also called upon all states "not to facilitate or in any way assist the aforementioned secessionist entity". This last phrase could be interpreted as going beyond the policy of non-recognition. Yet, it is highly disputable to read the words 'facilitate' and 'assist' as adding elements of a policy of isolation. In any case, in the practice of states, this was not taken to constitute an obligation to refrain from trading with the Turkish Cypriot community.

Generally, direct trade, as well as other forms of cooperation continued after 1984. Without any further Security Council resolutions expressing a view on the acceptability of maintaining trade or other relations with the Turkish Cypriot community, it is difficult to argue that an obligation to isolate this community economically or otherwise has been adopted under international law.

If the international community had wished to pursue a policy of complete isolation, it could have adopted similar measures to those adopted in the case of Southern Rhodesia. In that situation the Security Council condemned in Resolution 216 (1965) the unilateral declaration of independence by the racist minority and called upon all states to not recognize the illegal racist minority regime.

Furthermore in Resolution 217 (1965), it called upon all states to break all economic relations with Southern Rhodesia. These were further clarified and adopted as binding in Resolution 232 (1966). Clearly in this case, the call for non-recognition is combined with measures to achieve economic isolation. At the declaration of the

13 UN Security Council Resolution 367 (1975), <http://www.un.org/documents/sc/res/1975/res367e.pdf>.

14 UN Security Council Resolution 541 (1983), <http://daccessdds.un.org/doc/RESOLUTION/GEN/NRo/453/99/IMG/NRo45399.pdf?OpenElement>.

South African Bantustan Transkei in 1976, the UN General Assembly combined a call for non-recognition with a call for isolation.¹⁵

Some further clarification on the scope of a policy of non-recognition can be inferred from the advisory opinion of the ICJ on the continued occupation of Namibia by South Africa. In this case, the International Court was asked to give its legal opinion on the way states should interpret Security Council Resolution 276 (1970). In that resolution, the Security Council explicitly called upon states with economic or other interests in Namibia to refrain from any dealings with the government of South Africa that would be inconsistent with the illegal presence of South Africa in Namibia. The International Court wrote that:

“The restraints which are implicit in the non-recognition of South Africa’s presence in Namibia and the explicit provisions of paragraph 5 of resolution 276 (1970) impose upon member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory.”¹⁶

But it also added that:

“In general, the non-recognition of South Africa’s administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.”¹⁷

The Security Council took further measures to implement the opinion of the International Court, for example in Resolution 331 (1971).

In the cases of Southern Rhodesia, the South-African Bantustans and South Africa’s continued illegal presence in Namibia, the policy of collective non-recognition was combined with measures intended to isolate the particular regime. In the Security Council resolutions following the proclamation of the TRNC no such measures of isolation have been adopted.

15 United Nations General Assembly Resolution (1976), <http://www.un.org/documents/ga/res/31/ares31.htm>.

16 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, *I.C.J. Reports* 1971, p. 16 (‘Namibia opinion’).

17 *Ibid.*

THE LEGAL SCOPE OF THE NON-RECOGNITION OF THE TRNC

The effects of a collective policy of non-recognition must be distinguished from the effects of withholding recognition by an individual state as an element of its own freedom to determine which entities it wants to recognize or not. The individual withholding of recognition will not obstruct the acquisition of an international legal status of the entity as a state, whereas collective non-recognition precisely has the aim of denying legal status to the claiming entity. All efforts in the latter case will therefore be directed at avoiding the possibility that a particular course of action be interpreted as implying recognition of the entity.

A major problem is that there are no international legal rules or guidelines that lay down the kind of actions that should be avoided and those that are allowed. The listing in the ICJ Namibia opinion is helpful in this respect, but is presented in a particular context and it might be difficult to take it as decisive for all situations. The Court specifically called for states to abstain from diplomatic or consular relations, from entering into bilateral treaty obligations with South Africa related to Namibia, or invoking “treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation”.¹⁸

The circumstances of the Namibia case are different from the situation of the TRNC, but nevertheless they reveal that the scope of measures in the context of non-recognition is fairly limited. States and international organizations such as the European Union, maintain a considerable degree of freedom to continue their cooperation with the territory, as long as these contacts do not imply recognition of the TRNC.

Explicit statements of states or organizations to the effect that a particular form of contact with the territory does not and should not be taken to imply recognition can be acceptable. As the ICJ stated: “They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regards to Namibia”.¹⁹

Such declarations may be relevant where doubts could arise on whether a particular form of contact or cooperation with the authorities of the entity could imply recognition. This is a course of action that is frequently used in relation to contacts with Taiwan. The fact that most states do not recognize Taiwan as a sovereign state, or its government no longer as the representative of the whole of China, does not preclude the maintenance of close economic and other relations.

18 Namibia opinion, *Supra* Note 9, para 124. See also para 123 and 125. See also Oppenheim’s International Law, *Supra* Note 3, pp 196-175.

19 *Ibid.*

In this context, the 1994 decision of the European Court of Justice (ECJ) on trade between Northern Cyprus and member states of the European Union is highly relevant because of its great impact on the isolation of North Cyprus. We refer to Chapter 3 for the discussion of and the comments on this ruling. Here we limit ourselves to some remarks on the concept of isolation as used in official EU policies.

In the EU, the word isolation is not often used. Normally speaking, words such as ‘restrictive measures’ are used. The EU Treaty opens up the possibility to interrupt or reduce, in part or completely, economic relations with a third state. Article 301 of the EC Treaty entitles the Council to take the necessary urgent measures following a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy.

In such matters, the Council shall act by a qualified majority on a proposal from the Commission. At the end of 2006, there were 9 EU sanctions regimes implementing UN Security Council Resolutions adopted under Chapter VII of the UN Charter, and some 12 autonomous EU regimes.²⁰ Of these 21 regimes, 16 had implementing Community legislation, i.e. Council Regulations. These 16 sanctions regimes included measures affecting trade of goods and services and/or the free movement of capital. However, the EU did not use these options in dealing with the TRNC.

1.2. A SHORT HISTORY OF THE ISOLATION OF THE TURKISH CYPRIOT COMMUNITY BEFORE THE ACCESSION OF THE REPUBLIC OF CYPRUS TO THE EU

Five days before the Accession Treaty for Cyprus entered into force, the General Affairs Council declared that the EU was ‘determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community’.²¹ This call for ending the isolation imposed on the Turkish Cypriots was followed by the call of UN Secretary-General expressed in his Report of his mission of good offices in Cyprus, as cited in Chapter 2.

In these statements both the EU and the international community acknowledged not only the necessity of helping the Turkish Cypriot community to develop economically but also the reality of the Turkish Cypriots’ isolation.²²

20 At the time of writing, the EU’s sanctions overview was last updated in April 2007. See http://ec.europa.eu/external_relations/cfsp/sanctions/index.htm.

21 EU Bulletin, 4-2004, point 1.5.5.

22 This acknowledgement contrasts sharply with the Greek Cypriots’ claim that the Turkish Cypriots are not subjected to any isolation whatsoever.

BEGINNING OF THE ISOLATION

Although it is not our purpose here to discuss in detail the situation that existed in Cyprus all through the decades, some particular developments and policies deserve a closer look as they have had a direct impact on the isolation. The beginning of the isolation of the Turkish Cypriots can be traced back to the years after the *de facto* dissolution of the RoC in 1963. Since that time the isolationist treatment by the Greek Cypriots towards the Turkish Cypriots has been modified by various measures and has gone through a few phases.

During the first phase, which began in 1963, immediately after the RoC collapsed as a bi-communal partnership State, the isolation imposed on the Turkish Cypriots did not have an international character. Rather, it was the consequence of the unilateral decisions of the Greek Cypriot government that subjected the Turkish Cypriots to political, social and economic hardship.

On September 10 1964, the UN Secretary-General concluded that: "... the economic restrictions being imposed on the Turkish community in Cyprus, which in some instances have been so severe as to amount to a veritable siege, seek to force a potential solution by economic pressure as substitute for military action".²³ As a result of the mentioned embargo, the Turkish Cypriots could not import and transport any 'strategic' materials. "Most of these goods, however, have extensive civilian use, such as building materials and automobile replacement parts. In addition, other items are often subjected to seizure at Cyprus [Greek Cypriot] police checkpoints..."²⁴

The economic sanctions towards the Turkish Cypriots lasted until 1968 and included the ban on items such as clothing, wool, timber, telephones, stone, iron, cement, batteries or fuel in large quantities.²⁵ This economic hardship added to the existing physical segregation of the Turkish Cypriot community, of which a majority had sought refuge from violent and sometimes lethal attacks in the enclaves encompassing only 3 per cent of the island's territory.

Consequently, the isolationist policies, at that time designed as part of the internal policies of the RoC to put pressure on the Turkish Cypriots, had a disastrous effect on the Turkish Cypriots' chances for economic development. As a result of this embargo two separate economies were created in Cyprus, deepening the already existing economic and other disparities between the two communities.²⁶

23 The Report of the Secretary-General to the Security Council, September 10, 1964.

24 The Report of the Secretary-General to the Security Council, June 10, 1966.

25 The Turkish Cypriot Human Rights Committee, "Three Chapters on Cyprus – Chapter 1: Greek Cypriot Economic Blockade and Embargo Against the Turkish Cypriot Community", *Restrictions, Isolations and Vendettas: The Lot of the Turkish Cypriots Since 1963*, Nicosia: May 2007, DEKAP, DAU-SAM.

26 Patrick, pp. 106-114.

In the words of the UN Secretary-General: “The isolation of the Turkish Cypriot community, due to the restrictions placed on their movement on the roads, brought hardship on the members of the community as well as serious disruptions of their economic activities. In addition to losses incurred in agriculture and in industry during the first part of the year, the Turkish community had lost other sources of its income including the salaries of over 4,000 persons who were employed by the Cyprus Government and by public and private concerns located in the Greek Cypriot zones. The trade of the Turkish community had considerably declined during the period, due to the existing situation, and unemployment reached a very high level as approximately 25,000 Turkish Cypriots had become refugees”.²⁷

Turkey’s military intervention in 1974 resulted in the exchange of populations on the island and a *de facto* division of its territory. Living in a secured territory, the Turkish Cypriots started building their economy. Except for Greece, which joined the government of the RoC in the imposition of economic and political embargoes on Northern Cyprus, the rest of the world refrained from announcing restrictive measures. As elaborated above, the international community has never called for international sanctions against the Turkish Cypriots.

Nevertheless, the Greek Cypriots who enjoy exclusive access to international forums as the only internationally recognized government of Cyprus, were gradually successful in making trade and other economic relations with Northern Cyprus an unattractive option for other countries. Although it did not come as the result of an official international policy, Turkish Cypriots experienced the effects of isolation making them even more financially and otherwise dependent on Turkey.

The responses from the international community had all called for non-recognition of the newly created statehood. None of them, however, had called for sanctions—economic or otherwise—against the TRNC, leaving thus Greece and the Greek Cypriot government alone with their economic sanctions from 1974.

As discussed in Chapter 2, there is no provision under international public law which prohibits trade with a non-recognized entity such as the TRNC. Even though there have been no insurmountable legal obstacles to conduct trade with the Turkish Cypriot community, besides the embargo imposed by the Greek Cypriot government and Greece, the Greek Cypriots continued to benefit economically from their status as the internationally recognized state, while the Turkish Cypriot economy suffered from a *de facto* isolation and fell far behind.

27 The Report of the Secretary-General to the Security Council, September 10, 1964.

THE INTERNATIONALIZATION OF THE ISOLATION: THE ANASTASIOU CASE

An important legal development took place in 1994 with the European Court of Justice's ruling in *Anastasiou I*, factually banning the trade between the EC and the Turkish Cypriots and opening another chapter in the isolation saga.²⁸ Until 1994, the EC was the main trading partner of the Turkish Cypriots, with agricultural products—mainly citrus fruits and potatoes—being the major exports.

In 1994, agricultural products corresponded to 48.1 per cent of Northern Cyprus's total export volume with 23.4 per cent of the Turkish Cypriot working population employed in the sector.²⁹ The legal basis for this trade was the Association Agreement signed between Cyprus and the EC on December 19, 1972. The phytosanitary certificates, required by the Directive 2000/29/EC (former 77/93/EEC) which had to accompany the citrus fruits and potatoes while they were being exported from the north of the island, as well as EUR.1 certificates, had been issued by the Turkish Cypriot Chamber of Commerce (TCCC), an institution established in 1959.

After the declaration of independence of the TRNC, the Greek Cypriot authorities announced to the European Community that only certificates issued by Greek Cypriot authorities should be considered in line with the requirements of the Association Treaty. Nevertheless, the EC followed the wording of the Article 5 of the Association Treaty that provided a non-discriminatory basis for conducting trade between the EC and 'any national or company in Cyprus'³⁰ and continued to accept the certificates issued by the TCCC.³¹

This practice continued until the Greek Cypriot citrus fruit and potatoes exporters and producers (*Anastasiou and Others*) appealed to the UK High Court Justice to put an end to accepting TCCC certificates by British authorities (Minister of Agriculture, Fisheries and Food). As questions rose about the interpretation and application of Community law, the case was referred to the ECJ for a preliminary ruling.

In its judgement in the *Anastasiou-I* case the European Court of Justice provided a relatively restricted view on whether the acts of the authorities of an unrecognized *de facto* entity could be accepted for purposes of facilitating trade. The Court rejected the UK's and the Commission's view that certificates of origin issued by Turkish Cypriot authorities— which did not refer to the TRNC— would be acceptable and that imposing a ban on these certificates would be incompatible with Article 5 of the

28 Case C-432/92, *Anastasiou (Pissouri) I* [1994] ECR I-3087

29 S. Talmon, *State Planning Organization, Economic Developments in TRNC*, in "The Cyprus Question Before the European Court of Justice", Nicosia 1995.

30 EC-Cyprus Association Agreement, Article 5.

31 At this point it is worth mentioning that as the later Treaty of Accession of 2003, the Association Agreement also, though signed only by the Greek Cypriots on behalf of the whole of Cyprus, states that both the association as well as the accession shall be for the benefit of the whole population of the island.

Association Treaty which requires that the policies of non-recognition should not preclude the benefits of the entire population of Cyprus.

In this case, the Commission relied on the Namibia opinion of the International Court of Justice (discussed in Chapter 2) that a policy of non-recognition should not be to the detriment of the inhabitants of the unrecognized entity's territory. By rejecting the UK's and the Commission's position, the ECJ ignored a trend in international law that some acts of the authorities of unrecognized entities may be accepted without implying recognition of the entity as a whole. The effect of the decision was a substantial increase in the economic isolation of Northern Cyprus.³²

However, neither the European Community, nor its member states or the Security Council had taken these decisions with the intention of isolating Northern Cyprus. The purpose of the non-recognition policy of the United Nations was to deny legality to the newly created state; it was not to impose economic sanctions. In this decision the ECJ stated that "[t]he problems resulting from the de facto partition of the island must be resolved exclusively by the Republic of Cyprus, which alone is internationally recognized"³³ and implied that accepting certain acts of the authorities of Northern Cyprus could be regarded as "confer[ing] on the Community the right to interfere in the internal affairs of Cyprus".³⁴

Even though the ECJ's preliminary rulings under the Article 234 EC (ex Article 177) are not binding *erga omnes*, they do create precedent. The Anastasiou ruling had considerable effect in halting the Turkish Cypriot trade. While theoretically the goods exported from Northern Cyprus could still be imported to EC territory, in practical terms they were not competitive anymore as they had become too expensive.

They were no longer treated on non-discriminatory grounds and were thus no longer subject to the Association Agreement's preferential treatment along with the Greek Cypriot goods. Instead, from then on non-preferential import duties were levied on them. Besides, agricultural products could not be exported directly but only via Turkey, which further increased the costs. This development was yet another setback for the Turkish Cypriot economy: "According to EC officials some 3,000 – 4,000 people were laid off as a consequence of the ECJ decision".³⁵

32 For more see S. Talmon, "The Cyprus Question before the European Court of Justice", *European Journal of International Law*, 2001, Vol. 12, pp 727-750; C. Greenwood and V. Lowe, *Unrecognized States and the European Court*, *The Cambridge Law Journal*, vol. 74, 1995, pp. 4-6.

33 Anastasiou I, *Supra* Note 12, paragraph 47.

34 *Ibid.*

35 *Reuter European Business Report*, 7 March 1995. See also in Talmon, pp 9.

Table 1 Share of the EU in total Turkish Cypriot exports

	1980	1990	2006
Export to EU countries (in million USD)	34,5	51	9,1
Total exports (in million USD)	44,5	65,5	61,1
Share of the EU countries in total exports (%)	77,5	77,9	14,8

Source: Turkish Cypriot Chamber of Commerce

The decision of the ECJ, which was also based on an assessment of the relevant EC legislation, has to be respected, but one can argue that the outcome was not self-evident from an international law perspective. The alternative reasoning of the European Commission and of the UK is not without merit from an international law point of view. The previously mentioned Council declaration of 26 April 2004, which calls for ending the isolation of the Turkish Cypriot community³⁶ and the follow-up in the form of the proposed direct trade regulation indicates that, as will be described later in this report, a majority of the EU member states and the Commission agree that it is possible to accept certain documentation from Turkish Cypriot authorities with the purpose of direct trade, even though the TRNC remains unrecognized.³⁷

It must be stressed here that the successful blocking of the direct trade regulation by the Greek Cypriot government is not based on the arguments used by the ECJ, but on the argument that the direct trade regulation has to be adopted by unanimity, rather than by majority as the Commission had proposed. As a result of this decision, the Republic of Cyprus was able to block the adoption of the regulation. This issue of unanimity is further discussed in Chapter 5.2.

The ECJ hardly put forward any arguments based on international law, but with its reasoning it provided an argument for the Republic of Cyprus to push for further isolation of the North and to put pressure on states that were or are willing to continue their relations with the Turkish Cypriot community. As a result of the Court's ruling, after twenty years, the Greek and the Greek Cypriot economic embargo that was imposed on the Turkish Cypriots in 1974 found legal support in the EC and became subsequently a part of EC policy. Furthermore, the ECJ's continuing disregard of the distinction between the effects of the policy of non-recognition and isolating measures, still creates confusion with respect to the maintenance of relations with the TRNC from an international legal perspective.

36 EU Bulletin, 4-2004, point 1.5.5. See also Talmon, pp. 9.

37 COM(2004) 466, final of 7 July 2004.

Measures of isolation taken towards the Turkish Cypriots since the 1960s have resulted in the exclusion of the Turkish Cypriots from the international economy. The judgement of the ECJ had the effect of creating an official international economic embargo towards the Turkish Cypriots even though neither the international community, nor the EC or any other international body ever called for that. The restrictive measures taken by the EC after the ECJ decision had a substantial negative effect on the development and competitiveness of the Turkish Cypriot economy.

However, the ECJ decision on Anastasiou-I should be regarded in its specific context and should not preclude contacts and cooperation with the Turkish Cypriot community that fall short of recognizing the TRNC. As noted before, there is no regulation in international law that precludes international trade with an internationally unrecognized entity and there is no precedent supporting such a thesis. Although the increased isolation of Northern Cyprus resulting from the ECJ decision was apparently accepted by the Union's member states as they have not adopted any contrary policy, developments since 2004 indicate that they are now willing to end the *de facto* isolation.

Moreover, with the adoption of the Green Line Regulation immediately after the positive vote of the Turkish Cypriots on the Annan Plan, it can be argued that the EU has relaxed its application of the Anastasiou ruling in an effort to support the Turkish Cypriot economy. But as described in Chapter 5.2, this change of EU policy has not led to the expected results.



Part II

Political and economic isolation of the Turkish Cypriots after the accession of the Republic of Cyprus to the EU

In the aftermath of the 2004 referenda there have been various calls to end the isolation of the Turkish Cypriot community. Although it is clear that the Security Council has pursued a policy of non-recognition, there has never been any explicit decision to isolate Northern Cyprus. On the contrary, as UNSG Kofi Annan stated in his report S/2004/437 to the UNSC, having economic relations with the Turkish Cypriots does not go against the spirit of the SC resolutions on Cyprus. Though some limitations will inevitably result from the continued policy of non-recognition, ending the isolation is not an issue of revoking earlier decisions, but of taking a different political position towards Northern Cyprus.

In this part of the report we discuss a number of legal issues related to the Turkish Cypriots' demand for an end to their international isolation. Chapter 4 deals with the political isolation of the Turkish Cypriot community, with an emphasis on the efforts to create channels of access to the EU political system. Chapter 5 investigates the important and urgent issues directly related to the economic isolation of the Turkish Cypriot community after the accession of the RoC to the EU. Each chapter pays attention to the international legal arguments concerning the measures designed to end the isolation, as well as to the complications under EU law which have arisen after the accession of the RoC to the EU.

2.1. POLITICAL ISOLATION OF THE TURKISH CYPRIOTS: ISSUES OF REPRESENTATION

In this chapter we start with a brief investigation of the current EU policy regarding states' ability to open contact points or offices in Northern Cyprus. Following this, we consider the legal constraints and opportunities posed by the EU's legal system in respect of the Turkish Cypriot demand for political access to EU public policy-making in more detail.

REPRESENTATION OF STATES AND THE EU IN THE TRNC FROM THE PERSPECTIVE OF INTERNATIONAL LAW

Due to its significant symbolic value, the representation of states and international organizations in an unrecognized entity can provoke much debate and tension.

However, from a legal point, such representation is not particularly problematic. Non-recognition does not preclude the establishment of (liaison) offices when these are necessary for operations that are not intended for maintaining official contacts with the unrecognized entity. These offices therefore cannot have the status of diplomatic or consular missions, as this would be based on an official agreement and would imply recognition.³⁸ In international law, there are various examples of representations in unrecognized entities.

Several states maintain a representation in Northern Cyprus, namely Australia, France, Germany, the UK and the USA. They have been very careful to avoid any implied recognition of the TRNC. They have done so by never claiming that their offices are in fact embassies or consulates. The Australians for instance refer to their office in the north as “Australian place”, whereas the Germans refer to their location as the “Information Office of the German Embassy”, clearly indicating that it is merely an information office linked to the official embassy in the south.

The British and American official residences for their respective ambassadors are also located in the North. However this is merely a continuation of the situation before the partition of the island and therefore can not be seen as a political statement. Although both countries do run offices in the North they are again linked to the official embassies in the South. The TRNC representatives that have offices in Brussels, London, New York and Washington are also not granted any diplomatic rights, and only hold an office rather than the more formal consulate or embassy status.

The EU does not have any form of representation in the North. On the contrary, it seems to avoid having a formal office there at all costs. Even for the purpose of implementing the aid regulation under which some 250 million Euros will be spent,³⁹ the so-called ‘Programme Team’ does not operate within its own facilities but has to make use of offices made available through a private contractor.⁴⁰ Official representatives for this purpose have their formal addresses in Brussels and on the Southern part of the island. However, such a policy is not required on the basis of international law obligations.

38 Jennings and Watts ed., *Oppenheim’s International Law*, Supra Note 3, pp. 174.

39 European Council Regulation 389/2006, 27 February 2006.

40 COM(2007) 536, final; annual report on implementation of the financial aid regulation of 18/9/2007, para 3.1.1

POLITICAL RIGHTS OF THE TURKISH CYPRIOTS UNDER EUROPEAN LAW AFTER THE ACCESSION OF THE REPUBLIC OF CYPRUS TO THE EU

Another aspect of the political isolation of the Turkish Cypriots after the RoC entered the EU is the absence of any form of political representation of the Turkish Cypriots in the EU institutions. Political representation in the EU can be broadly defined as the process of making EU citizens' voices, interests, opinions and perspectives 'present' in the EU public policy making process. Political representation takes place when actors speak, represent, and defend interests on behalf of others in the EU political arena.⁴¹

Political representation is a distinguishing feature of modern democratic systems, and the right to be represented in public policy making is a core democratic right. The question to be addressed in the rest of this chapter is what room there is for the Turkish Cypriots under EU law to present their voices, interests, opinions and perspectives in the EU policy making platforms. This question is especially relevant in the context of the various calls that have been made in the recent years to end the isolation of the Turkish Cypriot community.

We first look at the EU legal regime put into practice for the Turkish Cypriots since 1 May 2004, thereby focusing on the legal scope for representation of the Turkish Cypriot community in the EU institutions. After that, we reflect on alternative forms of political representation which, while circumventing the constraints of European and international law, offer powerful opportunities for representing the Turkish Cypriot voice on Cyprus-related issues in EU policy making. In that context we also take a closer look at the procedures and mechanisms that enabled the Turkish Cypriot participation in another European forum, namely the Council of Europe. Finally we pay attention to some recent efforts to give the Turkish Cypriots representation in the European Parliament.

THE REPRESENTATION ISSUE: FROM THE ANNAN PLAN TO THE LEGAL STATUS QUO ANTE

In the Annan Plan, EU-Cyprus relations were regulated according to the Belgian model. The United Cyprus Republic would become a Member State of the EU, represented by the federal government in its area of competence. When matters fell predominantly or exclusively under the competence of the Turkish Cypriot or Greek Cypriot constituent states, Cyprus would be represented either by the federal government or a constituent state representative, provided the latter was able to commit to Cyprus.⁴²

41 For more information see Robert A Dahl, *Democracy and its Critics*, New Haven: Yale University, 1989; see also Hanna Pitkin, *The Concept of Representation*, Berkeley: University of California, 1967.

42 Annan Plan 2004, Article 19 (3).

Under this set-up, both Turkish Cypriots and Greek Cypriots would be nominated for, or elected to the EU institutions. However, the failure of the Annan Plan and the subsequent EU accession of the RoC brought the Greek Cypriots into the Union and left the Turkish Cypriots out. The EU had to fall back on a special legal arrangement it had prepared for the accession of Cyprus in case no solution could be achieved. This arrangement was the recognition of the RoC and the Greek Cypriot government as the only legitimate authority in Cyprus. The continuation of the legal status *quo ante* seriously complicated any effort to develop forms of political participation for the Turkish Cypriots in the EU policy-making system.

REPRESENTATION RIGHTS OF THE REPUBLIC OF CYPRUS

Under the institutional provisions of the Accession Treaty, the RoC has the right to be represented in the political and legal EU institutions and bodies.⁴³ All positions in the EU's institutions to which the RoC is entitled are occupied by Greek Cypriots. As long as the political conflict in Cyprus remains unresolved, EU law provides the Greek Cypriots with the exclusive right to represent the whole of Cyprus in the Union. But what about the rights of the substantial part of the area and population of Cyprus which is not represented by the Greek Cypriot representatives in the EU? What about the legal position of the Turkish Cypriots under EU law after the accession of the RoC? Does non-recognition of the TRNC leave any room for political participation and representation of the Turkish Cypriots in the EU policy making system?

Article 1(1) Protocol 10 of the Accession Treaty for Cyprus prescribes that “the application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control”. The wording of this article makes clear that the accession of the RoC implies that the *acquis* in principle also extends to the TRNC area but it is suspended pending a resolution of the conflict. It is important to note here that the suspension clause is restricted to territorial application. In other words, Northern Cyprus is considered as EU territory, yet this area remains outside the fiscal and customs system of the EU.

A question which arises is whether the suspension of the *acquis* in the TRNC area also excludes the Turkish Cypriots who live in this area from enjoying individual rights as EU citizens. Since individual rights are not dependent on the place of residence, are Turkish Cypriots EU citizens under European law?

According to Article 17(1) of the EC Treaty, “Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.” From a legal point of view, it can be claimed that the EU considers Turkish Cypriots as citizens of the RoC. Hence,

■ 43 For details see Act of Accession 2003, articles 11-15, 45.

even though they live in the areas not under the control of the government of the RoC, Turkish Cypriots are EU citizens.⁴⁴

This leads to the conclusion that the suspension of the *acquis* in Protocol 10 does not exclude Turkish Cypriots living in Northern Cyprus from EU citizenship rights, as long as activities under these rights are not linked to TRNC territory. As EU citizens, Turkish Cypriots are fully entitled to benefit from, *inter alia*, the four freedoms of the EC Treaty outside TRNC area; for instance they may establish a business in the southern part of Cyprus and in all the other Member States of the EU.

As EU citizens, Turkish Cypriots who reside in the TRNC, have a democratic right to political representation in EU institutions. However, they cannot exercise this right because, as we have already seen, all institutional rights are exclusively reserved for the RoC, the only recognized state in Cyprus. As a result no Turkish Cypriot takes part in the political or legal institutions and bodies of the EU.

Nevertheless, it can be argued that within the context of legal constraints, some room exists for the representation of the Turkish Cypriots in the European Parliament. Although compared to the Council and the Commission, the European Parliament is not a key decision-making institution on Cyprus related issues, it is an important platform in the European Union for political debate. Access to this platform would enable the Turkish Cypriots to present their visions and opinions on subjects of their interests.

The European Parliament consists of representatives of the peoples of the states brought together in the Union. These representatives come to office through direct elections, organized by the member states.⁴⁵ The representational mandate of the parliamentarians in the EP derives directly from the people: they are expected to represent the people, not the government of their state.

The six seats reserved for Cyprus in the EP are occupied by Greek Cypriots, who were brought to office through the EP elections held in the southern part of Cyprus on 13 June 2004. This made the Turkish Cypriot community the only group of EU citizens who do not enjoy any form of representation in the EP. It is difficult to maintain that the Turkish Cypriots are represented by the Greek Cypriot MEPs, who,

44 To make use of their citizen rights the EU requires that persons can prove that they are nationals of a Member State. In practice this amounts to the possession of the Member State's passport. As of 1 May 2004 a considerable number of Turkish Cypriots have obtained a passport from the RoC. An estimated 80.000- 100.000 Turkish Cypriots carry RoC passports at this moment. These passports are easily issued by the public authorities in the South to Turkish Cypriots, provided that certain requirements of the citizenship law have been met. Application for a RoC passport is generally considered by the Turkish Cypriots as a mere practical formality which is necessary to make use of EU citizen rights. The possession of a RoC passport does not invalidate the TRNC passport and should not be interpreted as a rejection of the TRNC or an implicit recognition of the government of the RoC as the legitimate government of the whole of Cyprus. Source: interview, North Cyprus: October 2007.

45 Treaty establishing the European Community, Articles 189, 190.

belonging to the other party to the conflict, challenge every single attempt proposed to benefit the Turkish Cypriot community. Nevertheless, solving the representation issue by setting aside two of the six Cypriot seats for the Turkish Cypriots and inviting them to take part in the European elections would breach the EU's own regulations as laid down in the Act of Accession and Protocol 10.

How can the non-representation of Turkish Cypriots be reconciled with the representative principles of the European Parliament? In our opinion, the EU is facing a true democratic deficit which is undermining its own democratic credibility. Some authors argue that such a democratic deficit does not exist because the RoC has adopted its electoral legislation in such a way that enables the Turkish Cypriots living in Northern Cyprus to cross the Green Line and to vote in the elections organized by the RoC.⁴⁶ This argument, however, is formalistic and not convincing, since it is completely at odds with the political reality of the Cyprus conflict.

Turkish Cypriots are expected to surrender their communal political right of electing their own representatives and to accept the authority of the Greek Cypriot government to prescribe the terms under which Turkish Cypriot elections shall be organized.⁴⁷ This demand goes to the heart of the matter in the Cyprus conflict, which can only be dealt with in a comprehensive negotiated agreement. As could be expected, the formal mechanism created by the Greek Cypriots to allow Turkish Cypriots to participate in European elections was turned down by the Turkish Cypriot community. The number of Turkish Cypriots who actually went to the Southern part to vote in EP elections on 13 June 2004 was negligible.⁴⁸

The European Union is at this point confronted with a dilemma. On the one hand it cannot deny basic democratic rights to the Turkish Cypriots who are also European citizens, on the other its own regulations prevent these rights from being put into practice. One way out of this dilemma is to create forms of political representation for Turkish Cypriots which can be implemented without violating the suspension clause of Protocol 10 and the EU's non-recognition policy towards the TRNC, while at the same time providing an effective voice to the Turkish Cypriots in EU public policy making. Under the present circumstances the introduction of some form of observer status for Turkish Cypriot representatives in the European Parliament might be a useful option.

46 This argument is used by Frank Hoffmeister, *Legal Aspects of the Cyprus Problem*, Martinus Nijhoff Publishers, Leiden: 2006, p 210.

47 Under Articles 63 and 94 of the Constitution of the RoC the Turkish Cypriot community has the right to elect its own representatives with a separate voting. This communal right was also upheld in the Annan Plan.

48 Hoffmeister, p. 210.

OBSERVER STATUS FOR THE TURKISH CYPRIOTS IN THE EUROPEAN PARLIAMENT

Observer status gives non-members the right to be present at (some of the) official meetings, but not the right to vote. Representation in the form of observer status is commonly used in many international organizations. Examples of organizations which apply this status include the Council of Europe and the United Nations. Different organizations apply different rules with regard to who is eligible for that status; the rights, privileges and obligations of the observer; and the procedures for application and acceptance.

Observers can be either states or intergovernmental organizations, who either do not qualify for membership or do not want to become full members. In specific cases the observer status has been assigned to non-state entities or non-recognized states, as for example when the United Nations granted this status to the Palestinian Liberation Organization⁴⁹, or when the Organization of Islamic States granted it to the Turkish Cypriot Community in 1979.⁵⁰ In both cases the observer status has been expressly granted to the authority representing the community, and not to the authority of the non-recognized state. Therefore, it can be said that the observer status is not necessarily restricted to (recognized) states and intergovernmental organizations. However, an organization is free to make restrictions in its own provisions.⁵¹

In general, observers have some or most of the rights which full members enjoy, but they can never exercise the right to vote. Rights which the observers may or may not have include: attending meetings; presenting information and speaking at the meetings; participating in various activities, such as the working committees of the organization.⁵² Sometimes observers are only allowed to attend meetings dealing with matters of direct interest to them. Since the entities' status under international law differs, the type of observer status and their rights in the organizations may differ as well.⁵³

49 UN Resolution 3232, 1974. The State of Palestine has not been recognized by the UN, but in 1974, PLO was invited as an observer to the work of the General Assembly and other UN organs.

50 After the referenda in 2004, the OIS upgraded the status from Turkish Muslim Community of Cyprus to Turkish Cypriot State as a step to remove the isolation of Northern Cyprus, see resolution 2/31-P. This decision was made in line with what was written in the Annan Plan, which envisaged two constituent states in Cyprus, the Turkish Cypriot State and the Greek Cypriot State. With this decision, the OIS wanted to demonstrate that it supported the Annan Plan, but at the same time it made it clear that the decision could not be interpreted as an indirect recognition of the TRNC.

51 In the Council of Europe, only states and intergovernmental organizations are eligible to become observers, while WTO membership is not contingent upon Statehood, and neither is observer status, which is why Taiwan was able to obtain Membership Status in the WTO in 2001.

52 See also the description of the observer rights in the Council of Europe, described in the next paragraph.

53 R.G. Sybesma-Knol, *The status of observers in the UN*, a.o. pp. 25.

Most international organizations' legal provisions (Treaty or Charter, Rules of Procedure) do not deal with the observer status. Therefore, the acquisition of observer status, the rights and privileges are often spelled out by the international organization through formal agreements (such as a resolution) or informally through custom or precedent. The decision to invite observers must always be in line with the policy of the organizations. The United Nations, for example, has no provisions on observer status in its Charter or its Rules of Procedure. Entities which are not (recognized) states need to be approved by the General Assembly to obtain observer status.

Although there are no provisions in EU institutional law that either enable or prohibit the EP to invite observers, granting observer status is not a completely new legal arrangement for the EP. Previously, acceding countries had obtained observer status during the period between the signing of the Accession Treaty and the date of their actual accession. Every 'Member state to be' has the right to participate as an active observer in virtually all the committees and bodies of the EU in order to integrate to the EU as smoothly as possible. The number of observer seats acceding states are granted in the EP is the same as the number of seats assigned to them in the Accession Treaty. They have the right to attend plenary sessions and to work in the Parliamentary Committees, but without the right to vote or stand for election.⁵⁴

Neither the EC Treaty, nor the Rules of Procedure of the EP deal with this issue or require that observers have to be states. Initiatives to invite observers who represent the Turkish Cypriot community to the working groups of the EP do not face any pre-existing legal impediments. Objections related to the non-recognition of the TRNC can be dealt with by having Turkish Cypriot observers who are appointed by the Turkish Cypriot political leader in his capacity as the internationally recognized leader of the Turkish Cypriot community (and not in his capacity as President of TRNC). For the EU, it is sufficient to declare from the very outset that observer status for the Turkish Cypriots can in no way be considered as a direct or indirect recognition of the TRNC. The Turkish Cypriot leader could make a statement to the same effect.⁵⁵

Granting observer status to the Turkish Cypriots would be a temporary provision designed with a view to the achievement of a negotiated settlement for the Cyprus issue. This was also envisaged by Council decision in June 2004, where it says that "...in the event of a comprehensive settlement, it is necessary to provide for an early ending of the mandate of the representatives of the people of Cyprus in the EP

54 The observers of the acceding states in the EP are members of governing and opposition parties. Their main task is to get acquainted with the EP work and to establish contacts within the political groups and committees.

55 Such a statement has political credibility as it is in line with the repeatedly demonstrated willingness of the Turkish Cypriot leaders to give up the TRNC for a new, federal partnership state with the Greek Cypriots on principles of the Annan Plan.

elected in June 2004 or in subsequent elections and to hold extraordinary elections in the whole of Cyprus for the remaining term of the EP”.⁵⁶ Therefore, just as was the case with the acceding states, observer status for, say, two Turkish Cypriots could also be considered as a temporary arrangement to prepare them for full integration into the EU after a settlement of the Cyprus conflict.

POLITICAL REPRESENTATION OF THE TURKISH CYPRIOTS IN THE COUNCIL OF EUROPE

We return now to the way the Council of Europe has dealt with the issue of representation of the Turkish Cypriots in its Parliamentary Assembly (PACE). Of course, the Council of Europe differs fundamentally in many respects from the EU and the same applies to PACE and the EP. For example, in contrast to the EP, the members of PACE are not elected directly but are delegates nominated by the national parliaments of the member states of the Council of Europe. Nevertheless, PACE has developed a mechanism to meet Turkish Cypriot demands for access to the political debates which may also be relevant to the EP context.

In 1993, the Council of Europe decided that the observer status was not inconsistent with its statute and that “any State willing to accept the principles of democracy, the rule of law and of the enjoyment of human rights” was eligible for this status.⁵⁷ This decision excluded non-state entities and non-recognized states from the possibility of gaining observer status.

The Rules of Procedure of PACE determine the rights of the observers in the Assembly. Observers may participate in committee meetings, the committee however, may decide not to allow the observers to attend a (part of the) meeting.⁵⁸ Observers may also sit in the Assembly, where they also have the right to speak with the authorization of the President of Assembly. They do not have voting rights.⁵⁹

In 1961, Cyprus joined the Council of Europe. Its delegation consisted of two representatives appointed by the Greek Cypriot MPs, and one representative appointed by the Turkish Cypriot MPs. After the events of 1963/64, and before 1984, Cyprus was not represented in PACE because it was not allowed to send a delegation representing only one of the two communities on the island. In 1984, however, one Greek Cypriot representative was accepted to the Assembly and one seat was

56 Council decision, 10 June 2004, concerning representation of the peoples of Cyprus in the European Parliament in case of a settlement of the Cyprus problem, 2004/511/EC.

57 Statutory Resolution (93)26.

58 Article 47.5, Rules of Procedure.

59 Resolution 1506(2006). From 2008 onwards, the observers also have the right to sign motions for resolutions, recommendations and written declarations. However, they shall not be taken into account for the number of signatures required. Observers can also participate in election observation missions, and moreover can become members of political groups.

reserved for the Turkish Cypriot community.⁶⁰ In 1997, PACE decided in resolution 1113 (1997) to increase the number of Greek Cypriot representatives to two. Moreover, a Turkish Cypriot parliamentarian was invited to attend committee meetings in PACE, whenever the situation of Cyprus was to be discussed, and to explain the Turkish Cypriot views on Cyprus.

The level of participation of the Turkish Cypriots in the debates and operations of PACE underwent formal upgrading after the positive vote of the Turkish Cypriots in the referendum on the Annan Plan. To encourage the Turkish Cypriots and to take appropriate steps to work towards ending the Turkish Cypriot isolation, PACE decided “to associate more closely elected representatives of the Turkish Cypriot Community in the work of the Parliamentary Assembly and its committees, beyond the framework of resolution 1113...”⁶¹

Hence, whereas Resolution 1113(1997) invited representatives of the Turkish Cypriot community whenever the situation in Cyprus was discussed, resolution 1376 went beyond this and invited them to all meetings of the Assembly sessions and its committees. The representatives of the Turkish Cypriot community were now allowed to explain their views on all issues under discussion, but they still could not vote.

The Turkish Cypriots’ representation rights at the PACE are generally the same as the content of the official observer rights at the PACE. However, Resolution 1376 does not talk about an observer status for the Turkish Cypriot delegation. On the contrary, in the first draft of the resolution it is mentioned that the invitation does not establish any status.⁶² As is noted above, in order to gain observer status in PACE an actor must be a state. Since TRNC is not recognized by the Council of Europe as a state, it cannot be granted formal observer status.

An alternative formal status at the Council of Europe is that of ‘special guests’, as provided for in article 56 of the Rules of Procedure of PACE. However, only national parliamentary delegations can be granted special guest status. Since the TRNC is a non-recognized state, its parliamentary delegation cannot be considered as a representative of a recognized national parliament.

Without any legal room to obtain a formal observer status in PACE, the only way for the Turkish Cypriot community to be heard is by being invited to the sessions of

60 Doc. 5609 of 22 July 1986, cited in Z.M. Necatigil, “The Cyprus Question and Turkish position in International Law”, pp. 245. The validity of the credentials of the Greek Cypriot representatives was not only contested by the Turkish Cypriots, but also by some members of the PACE, who signed a petition, asking to study the practical possibilities of the attendance of both communities in plenary sessions and relevant committees to ‘enable a genuine dialogue to take place within the only democratic, international forum embracing all countries of Western Europe’. However, in 1987 the PACE validated the credentials of the Greek Cypriot delegation.

61 UN Resolution 1376, New York: 2004.

62 Parliamentary Assembly of the Council of Europe, Political Affairs Committee Report, Doc 10161, 27 April 2004.

PACE and its committees. By providing for this in resolution 1113 (1997) and later more extensively in resolution 1376 (2004), PACE bypassed the legal obstacles in its own provisions. Since the Council of Europe made it a matter of policy to take active steps in ending the Turkish Cypriot isolation after their positive vote in the referendum, it was prepared to make an effort to create a special status for the Turkish Cypriot community. The status which the Turkish Cypriot community gained at PACE is a novelty. This status, although not an observer status, but a formal one is called the 'elected representatives of the Turkish Cypriot Community'.⁶³ De facto this status overlaps to a large extent with the rights and privileges of the observer status.

The formal observer status is not the only possibility for being represented in an institution below the level of full membership or for being able to voice one's positions and interests. Although there is legal room to grant the Turkish Cypriot community observer status in the EP, another option is to apply the representation formula of the PACE. One way to do this is to follow the procedure of the Council of Europe and to invite elected representatives of the Turkish Cypriot community to either plenary sessions and committee meetings or only to the parliamentary committee meetings when matters which are also of concern to the Turkish Cypriots are discussed so as to enable them to speak at the discretion of the committee chairman.

Whether Northern Cyprus is represented through observer status or through the PACE formula, the sensitive issue of TRNC's non-recognition can be avoided. A closer association with the Turkish Cypriots in the EP need not break down because of legal obstacles. In the end, it is a political matter. Technically, it is up to the Conference of Presidents of the EP to decide whether a proposal for the representation of the Turkish Cypriots will come up for discussion in the plenary meeting of the Parliament. In the plenary meeting a simple majority is sufficient to give the Turkish Cypriots formal access.

The Conference of Presidents is made up of the political groups' chairpersons and the president of the EP. It is in charge of the organizational aspects of the Parliament's work and decides on all questions related to legislative planning, including the timetable and agenda for plenary sittings. Article 23 of the EP's Rules of Procedure stipulates that when there is no consensus on a proposal, it will be put to vote, with the chairpersons having as many votes as there are members of their group. However, within the Conference of Presidents it is custom that on sensitive matters, like this one, consensus has to be achieved before a proposal will be sent to the plenary session for discussion and decision-making. Therefore, a majority of votes in the Conference will not suffice and the decision will hinge on the political will of the political parties.

■ 63 Implementation of Paragraph 6, Resolution 1376. (AS/Bur [2004] 81).

RECENT DEVELOPMENTS WITH REGARDS TO THE REPRESENTATION OF THE TURKISH CYPRIOTS IN THE EUROPEAN PARLIAMENT

In 2005, the EP established the High Level Contact Group for strengthening the relations with the Turkish Cypriot community after the accession of the RoC and “to contribute in a manner which is constructive and respectful of all sensibilities to defining a ‘modus operandi’ for the EP vis-à-vis the Turkish Cypriot community until such time as the question of reunification of the island had been resolved”.⁶⁴ Amongst its defined tasks were activities intended at establishing contacts with political representatives and representatives of the civil society in the broadest sense of the term, to gather information on the region’s political and socio-economic situation, and to update the Conference of Presidents and Parliamentary Committees on how the situation develops. The group consisted of one member from each political group and a representative of the non-attached delegates.

Since 2005, the group visited Cyprus five times and had contacts with the leaders of the RoC and of the Turkish Cypriot community. In the report outlining the group’s activities in 2006, facilitating contacts between the Turkish Cypriot community and the EP is discussed, with a view to establish a permanent dialogue with that community. The report also mentions the Turkish Cypriot community’s wish to be invited to the EP in order to be able to send its own representatives. In March 2007, this report was approved by the Conference of Presidents. In July 2007, the Conference of Presidents discussed a report on the Group’s visit to Cyprus the same month. During this meeting, the Conference of Presidents stated its position as “from a legal point of view, it is not possible for the European Parliament to invite observers from the Turkish Cypriot community”.⁶⁵ This position is contrary to the findings of the research outlined throughout this report, where no insurmountable legal obstacles were found for meeting the demands of the Turkish Cypriots to be represented in the EP.⁶⁶

There are several Members of the EP who lobby to ensure a form of representation for the Turkish Cypriots in the EP. Some of them are members of the High Level Contact Group; most of them are also backed by their political parties. The Greens/EFA, the Socialists (PES) and Liberals (ALDE) are those political groups who support initiatives to enable Turkish Cypriot representation. The Socialists even went further with an initiative to invite the sister party in Northern Cyprus to send an unofficial observer to the group meetings.

64 Mandate of the High Level Contact Group, 29 September 2005.

65 PE392.496/cpg: Summary of Decisions of the Conference of Presidents Meeting on 12.07.2007.

66 However, it would appear that this matter was not discussed extensively, because of lack of time during the said meeting.

The most recent development occurred when the Socialist group proposed in a meeting of the Conference of Presidents “to involve the people of the Turkish Cypriot community of Northern Cyprus more in the work of the European Parliament by giving two representatives the possibility to participate in the work of the European Parliament’s committee meetings, and to grant them the right to speak -at the discretion of the committee chairmen- when subjects are discussed which are also of relevance to the people of Northern Cyprus”.⁶⁷

The approach contained in this proposal is similar to that in PACE Resolution 1376, although there representatives were also given the right to attend the plenary sessions in the Assembly. Therefore, it can be said that the Socialists’ proposal follows the example of the Council of Europe by trying to find a possibility for Turkish Cypriot representation while avoiding legal obstacles. As mentioned, for the EP to be able to discuss and vote on this proposal, a consensus is needed within the Conference of Presidents to bring it to the agenda of the plenary meeting.

Great Britain, during its Turkey/UK strategic partnership in 2007/8, committed itself to work on certain key strategic priorities of mutual benefit. One of them was to help end the isolation of the Turkish Cypriots and encourage the international community to join them in these efforts. In order to realize this goal it agreed to work within the UN, EU and bilaterally to promote direct commercial, economic, political and cultural contacts between the UK, the EU and the Turkish Cypriots. Moreover, it promised to maintain high level contacts with Turkish Cypriot authorities and it mentioned expressly that it would uphold the right to representation in the EP. These attempts were all aimed at bringing the Turkish Cypriots closer to Europe and preparing them for a future settlement.⁶⁸

2.2. ECONOMIC ISOLATION OF THE TURKISH CYPRIOTS

2.2.1 INTERNATIONAL LEGAL ARGUMENTS AND SOME PROPOSED MEASURES TO END THE ECONOMIC ISOLATION

In chapter 2 we analyzed the distinction in international law between recognition, non-recognition and isolation in relation to the situation in Northern Cyprus after 2004. This was followed by a brief assessment of the legally relevant decisions that were taken by the international community after the proclamation of the TRNC in 1983 and an investigation of the scope of the international legal obligations related to the policy of non-recognition. This provides the international law background for an assessment of some other urgent and sensitive issues in the current debate on Northern Cyprus: transportation and direct trade.

67 Proposal made by the Socialist Group, 2007.

68 Turkey/United Kingdom Strategic Partnership Treaty, 2007/8.

ACCESS TO SEAPORTS

The Republic of Cyprus claims that all ships should be denied the right of access to seaports in Northern Cyprus. Under the threats of arrest and financial fines from the side of the Greek Cypriot authorities, the ban on the use of ports in the North has generally been complied with, with the exception of ships registered in Turkey. The result is that the ports of the TRNC lying on the main route line connecting Europe and Middle East are avoided and ships divert their routes to the ports of the Southern Cyprus. This of course provides a major obstacle to trade relations.

Opening the ports of the North for trade would evidently be vital for the resumption of direct trade between Northern Cyprus and the EU. A number of issues arise: (1) Can the Republic of Cyprus legally restrict access to ports that are not under its effective control? (2) Is making use of the ports of the North in any manner a violation of the policy of non-recognition? (3) Are there any other legal restrictions on the use of ports of an unrecognized entity? It needs to be stressed here again that no sanctions by the United Nations or any other organization have been put into effect that would require ships to avoid the ports of Northern Cyprus.

As to the first issue, there is not an explicit rule in international law that deals with this matter. The 1982 Convention on the Law of the Sea does not deal with the issue of access to foreign ports. The basic rule is that ports fall under the full jurisdiction of the state.⁶⁹ It must be assumed that when a state no longer exercises control over part of its territory, it cannot maintain that it has the power to exercise some of its sovereign rights. Access to ports of the territory it no longer controls will have to be regarded as a matter of regulation by the new authorities exercising the *de facto* control over the territory. The Republic of Cyprus thus cannot close seaports it does not control.

A state normally does not interfere with a ship's decision on which ports it will fly its flag. It certainly does need to give permission for a ship to call at a certain port. If a state wants to prohibit access of ships flying its flag to a certain port, it has to do so in a decision based on domestic legislation. This could be based on an international legal obligation to isolate a certain entity, but such a decision could also have a different reason. When a foreign ship calls at a port in Northern Cyprus in defiance of the prohibition of the RoC, this cannot be regarded as a violation by the flag state of a ship of any international right claimed by the RoC.

This conclusion is also shared by the European Commission. In the written response to a question regarding the legality of opening a regular ferry service between the ports of Famagusta and the Syrian port of Latakia it stated that "...it is the

■ 69 R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed., Manchester, 1999, at pp. 61-65.

Commission's understanding that there is no prohibition under general international law to enter and leave seaports in the northern part of Cyprus".⁷⁰

Moreover, when a foreign ship calls at a port in Northern Cyprus in defiance of the prohibition of the RoC, this can not be regarded as a violation of any international right claimed by the RoC by the flag state of that ship. Flag states normally do not decide for or interfere with decisions of a ship flying its flag on which ports it will call at. A flag state certainly does need to give permission for a ship to call at a certain port. If a flag state wants to prohibit ships flying its flag to call at a certain port, it has to do so in a decision based on domestic legislation.

The RoC may try to deter foreign ships from calling at a port in the North by subsequently denying that ship, or ships flying the same flag, access to ports under its control or by threatening the master of the ship or the owner with criminal prosecution in the RoC. Such actions would be a political decision under domestic law.

A commercial ship's decision to make use of the ports of an unrecognized entity does not imply recognition of that entity as a state and therefore cannot be regarded as a violation of the policy of non-recognition. However if a warship or other ship operated by a government for non-commercial purposes would visit these ports, this could imply recognition. It would be dependent on the circumstances and the reasons for calling at a port in Northern Cyprus to make such an assessment.

International rules on safety and security that apply to shipping or rules and regulations related to the handling of ships in ports (e.g. in the context of conventions adopted in the International Maritime Organisation, IMO), may be applicable to a particular state and subsequently to the vessels flying its flag. As the TRNC is not a party to such conventions, this might create practical obstacles. However as no claims have been made to that extent, this will not be further investigated. In any case, this would not be a matter that would be of primary concern to the RoC as the state claiming the right to close its ports but would instead be a matter for the authorities that supervise the implementation of such rules and regulations.

DIRECT AIR LINKS

Direct air links with Northern Cyprus are considered to be of great interest for its economic development, particularly in the tourism sector. The basic rules of access to airports are regulated in the Chicago Convention on International Civil Aviation.⁷¹ There is no automatic right to land and to transport passengers to and from a

70 Answer given by Commissioner Rehn on behalf of the Commission, E-4901/07EN.

71 Convention on International Civil Aviation signed on 7 December 1944 by 52 states, currently has 190 contracting parties. See www.icao.int.

country without a prior agreement. Aircraft registered in the states parties to the Chicago Convention have the right to fly over and land in all other states parties to the Convention, but the disembarking or taking aboard of passengers, cargo or commercial mail, requires permission (Art. 5).

The scope of this provision is limited to non-scheduled flights, such as charter flights. Scheduled air services are only allowed with the permission and authorization of the state concerned (Art. 6). Usually states conclude bilateral or multilateral conventions with the purpose of regulating regular air services. Furthermore, states parties to the Chicago Convention have the right to designate the airports in their territory that can be used for international flights (Art. 10). This allows the state to limit the number of airports where it needs to have facilities for the purpose of customs and other examinations.

In order to assess the international legal situation, there are three questions that need to be considered: (1) Is the Chicago Convention applicable for Cyprus as far as it is related to the part of the island that is not under the effective control of the Republic of Cyprus and what are the consequences of such a finding?; (2) Does licensing by a state of direct flights between its territory and an airport in Northern Cyprus in any way imply recognition of the TRNC? (3) Are there any security or safety considerations that might be decisive for not granting a license for direct flights? The possible EU-dimension of these issues will not be considered. So far the Commission has taken the position that licensing direct flights to Northern Cyprus would be a matter of concern for the individual member states.

The first question is directly related to Article 1 of the Chicago Convention stating that “The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory”. Article 10 on the right to designate international airports is an implementation of this sovereignty. It is sometimes claimed that foreign states cannot allow direct flights to Northern Cyprus as the government of the Republic of Cyprus has not designated any airport in the north as an international airport. This claim appears to be unfounded for the same reason that a state that does not exercise control over part of its territory, cannot close sea ports in that region to international trade and travel. The principle of effective control dictates that the authorities exercising *de facto* control are in a position to decide on whether or not an airport can be designated as an international airport.

The TRNC is not a party to the Chicago Convention. The Chicago Convention is thus not applicable to Northern Cyprus. This is similar to the situation concerning Taiwan. In particular, the implementation of the security and safety issues that are regulated under the Chicago Convention and implemented through the International Civil Aviation Organisation (ICAO) would be complicated and could create an obstacle to international air communication as states will not easily accept the use of airports

outside this system. However, in the case of Taiwan, states have found many pragmatic solutions to ensure the safety and security, without recognizing Taiwan as a state or compromising the People's Republic of China as a state party to the Chicago Convention.

The second question identified above, whether licensing direct flights by the civil aviation authorities of a particular country would violate the policy of non-recognition, depends on the legal conditions related to licensing in the particular state giving the license, and the type of contact that would be required with the authorities of the unrecognized entity in order to fulfill the criteria; e.g. in respect to safety and security. Scheduled air services, as regulated in Article 6 of the Chicago Convention can be problematic, as this would normally require an agreement between the states.

On the third issue we can be brief. The Chicago Convention and the ICAO provide the backbone for the safety and security of air transport. Operating outside this framework creates problems, but as precedents show it is not impossible to find practical solutions if the parties involved are willing to do so.

The conclusion is that despite its complications international law does not create any obstacles per se against direct flights to and from Northern Cyprus.

DIRECT TRADE

Direct international trade with private parties in an unrecognized entity for which no measures of isolation have been adopted do not seem to be contrary to international law. In the Namibia situation, ICJ advised that states should not engage in trade relations with South Africa on behalf of or concerning Namibia (para 124). In resolution 550 (1984) the Security Council called on states not to "facilitate or in any way assist the aforementioned secessionist entity". This very general call from the Security Council cannot be construed as prohibiting any form of direct trade as it has been explained in chapters above.

In the political debates, reference is often made to the obligations stemming from international law that would hinder establishing closer relations with the Turkish Cypriot community. In this chapter an attempt will be made to separate the public international law aspects of the issue from the political or other non-legal aspects. We conclude that the de facto policy of isolation that has been developed is mainly a political choice. The restrictions that follow from international law with regards to direct trade and access to seaports and airports are limited. As a result of the changes occurred in 2004, states may now, without violating international law, take steps towards ending the isolation of the Turkish Cypriots.

2.2.2. ECONOMIC ISOLATION: THE INVOLVEMENT OF THE EUROPEAN UNION

Since 23 April 2003, people from both sides of the island are able to cross to the other side. The opening of the borders posed specific legal complications for the EU once it became clear that Cyprus would enter the EU as a divided country, with the fiscal and customs union *acquis* suspended in the North. Just before the official accession of the RoC, on 29 April 2004, the Council adopted the Green Line Regulation to address these legal issues, while also trying to ease the economic isolation of the Turkish Cypriot community.⁷²

The same goal - to help the Turkish Cypriots - was also advanced in the previously mentioned Council declaration of 26 April 2004 and stated: "The Turkish Cypriot community has expressed their clear desire for a future within the European Union. The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. The Council invited the Commission to bring forward comprehensive proposals to this end, with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU".⁷³ In line with this declaration, the Commission devised two instruments to put this pledge into existence, the Financial Aid Regulation and the Direct Trade Regulation.

GREEN LINE REGULATION

The Green Line Regulation has been devised to regulate the movement of persons, goods and services from the North to the South of the island. The Regulation seeks to enable Turkish Cypriots to sell their products in the South and to export to the EU markets through the ports and airports of the RoC. The regulation also provides for a mechanism to control the flow of persons and goods that enter the EU customs area.

At the same time the Regulation states at the outset that the Green Line does not constitute an external border of the EU.⁷⁴ In spite of that, for the purposes of the Green Line Regulation there is no free movement of persons from the Northern areas to the South and crossings are rather strictly regulated. In this context it has to be mentioned that Directive 2004/38/EC applies only to areas controlled by the Greek Cypriot government. This Directive eliminates the need for EU citizens to obtain a residence card, introduces a permanent right of residence, defines more clearly the situation of family members and restricts the scope for the authorities to refuse or

72 Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession, OJ 2004 L 161/128, with corrigendum at OJ 2004 L 206/51.

73 Bulletin 4-2004, point 1.5.5.

74 Recital (7) of the Green Line Regulation

terminate residence of EU citizens who come from another Member State. In the Green Line Regulation special rules are provided with regards to access to Northern Cyprus for EU citizens and third country nationals.

According to Article 2 of the Regulation, the authorities of the RoC have the responsibility to carry out checks on all persons crossing the Green Line. Such checks should also be carried out on vehicles and objects in the possession of persons crossing the Green Line. All persons crossing the Line should undergo at least one such check in order to present their identity and can cross only at crossing points authorised by the authorities of the Republic of Cyprus.

The Commission, in its most recent annual report on the implementation of the Green Line Regulation from 20 September 2007, reported that during the period between 1 May 2006 and 30 April 2007:

“... 788,823 [down from 1,195,594 mentioned in the 2006 Annual Report] Greek Cypriots crossed from the government controlled areas to the northern part of Cyprus and 1,348,215 [down from 2,179,815 in 2006] Turkish Cypriots crossed from the northern part of Cyprus to the government controlled area... The Commission received sporadic complaints from EU citizens regarding intrusive checks on persons and confiscation of personal documents at the crossing points. The Customs Code of the RoC allows customs officials to, inter alia, search persons, detain or seize goods and arrest without a judicial warrant any person whom the customs officer finds committing, or attempting to commit, any offence provided by the customs or other legislation punishable with imprisonment including the case of suspicion of illegal purchase or use of Greek Cypriot property in the northern part of Cyprus. In October 2006, the Parliament of the Roc adopted an amendment to the Penal Code which penalises any illegal use (including rent) of property with a sentence of seven years of imprisonment. Given that some 78% of the private property in the northern part of Cyprus is (originally) Greek Cypriot property, this amendment caused concern in the Turkish Cypriot community.”⁷⁵

With regards to third country nationals, the Regulation states that they should only be allowed to cross the Green Line provided they possess either a residence permit issued by the RoC or a valid travel document and, if required, a valid visa for the RoC and under the condition that they do not represent a threat to public order or public security.⁷⁶

75 Communication from the Commission, Annual Report on the implementation of Council Regulation (EC) 866/2004 of 29 April 2004 and the situation resulting from its application, COM(2007) 553, 20.9.2007 (hereafter 2007 Annual Report).

76 For a more detailed account of how those terms are defined for EC law purposes see the case law of the Court of Justice in the following cases: Case C-41/74, *Van Duyn v. Home Office* [1974] ECR 1337; Cases C-115 & 116/81 *Adoui and Cornuaille v. Belgian State* [1982] ECR 1665; Case C-36/75 *Rutili v. Minister of the Interior* [1975] 1219; Case C-67/74 *Bonsignore v. Oberstadtdirektor der Stadt Köln* [1975] ECR 297; Case C-30/77 *R. v. Bouchereau* [1977] ECR 1999.

Although the Green Line Regulation was also meant to facilitate services across the Green Line, there is no provision for services per se in the Regulation. Article 7 on 'Taxation' provides a layout for the supply of services to some extent but the Commission, in its 2005 Annual Report, reported of not having any knowledge of services supplied across the Line during the first year of the operation of the Green Line Regulation,⁷⁷ and the 2006 and 2007 Annual Reports do not even mention the movement of services.

Regarding goods, the Regulation prescribes that these may be transported to the southern part of the island on the condition that they are "wholly obtained" in the areas not controlled by the government of the RoC or "have undergone their last, substantial, economically justified processing or working in an undertaking equipped for that purpose" in those areas.⁷⁸ The Turkish Cypriot Chamber of Commerce (TCCC) is responsible for issuing the relevant documents whose authenticity is, after having passed the Green Line, subsequently checked by the authorities of the RoC. According to the Commission's 2005 Annual Report on the implementation of the Green Line Regulation,⁷⁹ the TCCC issued 862 accompanying documents. Initially, trade of animals and animal products were excluded, but on 4 May 2007 the Commission adopted Decision 2007/330/EC, authorising for the first time the trade of certain animal products such as honey and fresh fish and laying down the conditions for the movement of those products.⁸⁰ However, at the time of writing, this Decision has not produced any significant concrete results.

Although the authorities of the RoC have rarely prevented goods from crossing (though it should be noted that delays alone are already having serious consequences, as in the case of consignment of potatoes), the limitations in trade are "caused – to a considerable extent – by restrictions in the Green Line Regulation itself. It does not allow products brought into the northern part of the island from other EU Member States or Turkey to cross to the government controlled areas. This might significantly reduce benefits to producers, service providers and consumers north and south of the Green Line, as pointed out in a recent World Bank study...Turkish Cypriot commercial vehicles and in particular lorries and buses still cannot move freely through the island. The RoC does not accept roadworthiness certificates of commercial vehicles or professional driving licenses issued by the Turkish Cypriot Community (although it does accept roadworthiness certificates for passenger cars)."⁸¹

77 2005 Annual Report, pp. 5.

78 Within the meaning of Articles 23 and 24 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ 1992 L 302/1.

79 Communication from the Commission, Report on the implementation of Council Regulation (EC) 866/2004 of 29 April 2004 and the situation resulting from its application, COM(2005) 320, 14.7.2005, p. 3.

80 Council Regulation (EC) No 866/2004, OJ L 123/30.

81 2007 Annual Report, pp.5-11.

In general, the overall volume and value of Green Line trade remains very low.⁸² In any case, the EU Green Line Regulation has not reversed the steep decline in trade with the European markets after the Anastasiou ruling of the ECJ in 1994. As an illustration of this, while the Turkish Cypriot exports to the European Communities represented 81% of all trade in 1988, even with the “help” of Green Line Regulation it was only 15% in 2006.⁸³ However, already at the time of the enactment of the Green Line Regulation, most observers had estimated that its effect would be too limited to overcome the isolation of the Turkish Cypriot Community.⁸⁴ Indeed, the Green Line Regulation did not turn out to be an effective device for ending the economic hardships perpetuated or aggravated by the suspension of the fiscal and customs union *acquis* in the North. Certainly it cannot be considered as an alternative to the proposed direct trade regulation.

POLITICAL AND LEGAL BACKGROUND OF PROPOSALS FOR FINANCIAL AID AND DIRECT TRADE

The introduction of the EU as an actor in the Cyprus problem has undoubtedly had an impact on the overall situation. The earliest association between the European Communities and the RoC was established by the Association Agreement in 1972. Although the Agreement was only signed by the Greek Cypriot government, it was understood that the whole population of the island was expected to benefit from it. Article 5 of the Association Agreement provides that “the rules governing trade between the contracting parties may not give rise to any discrimination between ... nationals in Cyprus”.⁸⁵ Following this spirit, the Protocol 10 of the Act of Accession 2003 reiterates, in its recital, the EU’s desire “that the accession of Cyprus to the European Union shall benefit all Cypriot citizens [Greek and Turkish] and promote civil peace and reconciliation”.⁸⁶ While by this very Protocol the *acquis communautaire* has been suspended in the areas of the island where the RoC government does not exercise effective control pending the settlement of the conflict, it should be emphasized that this suspension is only necessary because “such settlement to the Cyprus problem [meaning consistent with relevant UN SC Resolutions] has not yet been reached”.⁸⁷

It is obvious from the results of referenda on the Annan Plan of April 24, 2004, in which the Turkish Cypriots expressed their clear desire for a future in the EU, that the suspension of the *acquis* is not the fault of the Turkish Cypriots. Nevertheless, the negative impact has been felt solely by the Turkish Cypriot community.

82 Turkish Cypriot Chamber of Commerce, Interview.

83 Turkish Cypriot Chamber of Commerce, Interview.

84 Hoffmeister, pp. 201.

85 EC-Cyprus Association Agreement, Article 5.

86 OJ 2003, L 236.

87 Ibid.

The desire to have all Cypriots benefiting from Cyprus's accession was not only stated in the recital of Protocol 10, but also in Article 3(1) of the Protocol that reads: "nothing in this Protocol shall preclude measures with a view to promoting the economic development of the areas referred to in Article 1 [meaning Northern Cyprus]". This language clearly implies the need to 'reward' the Turkish Cypriots and to take measures that would ease the economic disparities between the two communities in the island.

As has been concluded earlier in this Chapter, the Green Line Regulation is not and has never been intended to be an effective instrument for ending Northern Cyprus's economic isolation. A partial remedy for this deficiency was envisaged in two additional regulations: the Financial Aid Regulation and the Direct Trade Regulation. These regulations were proposed by the Commission as 'twin' instruments, meaning that they were to be adopted as one package as soon as possible.

On 7 July 2004 the Commission presented the proposals for a direct trade regulation⁸⁸ and for a financial aid regulation.⁸⁹ The former, which offered a preferential regime for products originating in Northern Cyprus and entering directly (meaning not via the Green Line) into common customs territory, has still not been adopted as a result of fierce opposition from the government of the RoC.

FINANCIAL AID REGULATION

Under the proposal for a financial aid regulation, EUR 259 Million was earmarked for infrastructure projects, social and economic development, bi-communal events, the harmonisation of the Turkish Cypriot legal system with the *acquis* and other purposes between 2004 and 2006. The Commission would extend the mandate of the European Agency for Reconstruction (EAR), which is responsible for EU aid to parts of the Western Balkans, to be able to cover Northern Cyprus. Although the Council finalised its preparatory work in November 2004, it could not adopt the regulation because of the persistent blockage by the RoC. Since the Council did not adopt the draft aid regulation by the end of 2005, EUR 120 Million were lost for budgetary reasons. On 27 February 2006, the Council finally agreed to use the remaining EUR 139 Million and adopted Council Regulation (EC) No 389/2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction.⁹⁰ Eventually it was possible to reconstitute

88 Proposal for a Council Regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control, COM(2004) 466, 07.07.2004.

89 Proposal for a Council Regulation establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community, COM(2004) 465, 07.07.2004.

90 OJ 2006. L 65/5.

the EUR 259 Million package by requesting an additional EUR 120 Million under Heading 7 of the budget. Incidentally, the adoption of the Regulation did not extend recognition of the TRNC as Recital (10) of the financial aid regulation states that “nothing in the Regulation is intended to imply recognition of any public authority in the areas (meaning: Northern Cyprus) other than the Government of the Republic of Cyprus.”

Financial assistance under the Regulation focuses on five priority objectives: (1) developing and restructuring of infrastructure (approx. EUR 129,25 Million) in key sectors, such as environment (and in particular water and sanitation, solid waste and nature protection), energy (with particular attention to supply and demand management issues), traffic safety and telecommunication; (2) promoting social and economic development (approx. EUR 70,2 Million), inter alia rural development, restoration of urban and local infrastructure, and infrastructure work needed for the opening of new crossing points across the Green Line; (3) fostering reconciliation, confidence building measures, and support to civil society (approx. EUR 13 Million), inter alia support to the Committee of Missing Persons, de-mining in the buffer zone and adjacent areas and history teaching; (4) bringing the Turkish Cypriot community closer to the EU (approx. EUR 9,5 Million), e.g. by way of an information campaign; and (5) preparing the Turkish Cypriot community to introduce and implement the *acquis communautaire* (approx. EUR 13,46 Million), inter alia through TAIEX.

After the ‘twin’ regulations were decoupled so that financial aid could at least be provided to the Turkish Cypriots, the Direct Trade regulation’s draft stayed out in the cold and became a subject of great controversy. As the Greek Cypriots have staunchly opposed any direct trade with the Turkish Cypriots, the regulation has remained in draft form so far. As its adoption officially hinges upon a proper legal basis with respect to EC law, it is worth analysing this matter a bit further.

DIRECT TRADE REGULATION: A SAGA OF DIPLOMATIC WARFARE

According to its Recital, the draft regulation on direct trade aims to “facilitate trade between areas and Member States other than Cyprus”. On the other hand, the essential content of the proposal is to ensure that products which “originate in the Areas (meaning: Northern Cyprus) and are transported directly there from, may be released for free circulation into the customs territory of the Community with exemption from customs duties and charges having equivalent effect within the limits of annual tariff quotas”.⁹¹

The Commission, in its explanatory memorandum of the proposal, submitted that “[t]he legal basis for this Regulation can only be Article 133 EC. Cyprus in its full

■ 91 Determined by the Commission, see Arts. 1(1) and 4(1) of the draft regulation.

territory became a Member State on 1 May 2004. However, the *acquis* is suspended in the areas not under effective control of the Government of the Republic of Cyprus (the “Areas”) according to Article 1(1) of Protocol 10 of the Act of Accession. This means *inter alia* that the Community’s customs code which defines the EC customs territory is not applicable in the “Areas”. Consequently, trade with the Areas follows the rules applicable to third countries. This situation is not unique. There are other territories of the EU which are not included in the EC customs territory. For Ceuta, Melilla and Gibraltar, apart from special rules, trade rules based on Article 133 EC exist, whilst for Büsingen, Campione d’Italia and Helgoland the relevant third country rules apply generally.”⁹²

If Article 133 EC were used as a basis for the regulation, a qualified majority would be required in the Council. It is reasonable to believe that in such a case the regulation would have been adopted. However, the government of the RoC, supported by the Council Legal Service argued that the correct legal basis for the direct trade regulation should be Article 1(2) of Protocol 10 that reads: “[t]he Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the withdrawal of the suspension referred to in paragraph 1”. The argument put forward is that the effect of the Commission’s proposal would amount to a withdrawal of the suspension of the *acquis* with regard to free movement of goods which would consequently amount to recognition of Northern Cyprus as a state entity. In this light, it is needless to say that there is hardly any sense in basing the Direct Trade regulation on an article that requires unanimity as it would be directly blocked by the RoC.

The Government of the RoC furthermore argues that fostering trade with the TRNC would violate the duty of loyalty of the Community *vis-à-vis* Cyprus as a Member State (Art. 10 EC Treaty)⁹³ and the EU cannot unilaterally establish trade relations with the areas not under the effective control of the government of the RoC because it would thereby disregard the 1974 decision of the government of the RoC to close all ports outside its control. However, in this respect, it has been pointed out that the draft regulation would not set aside the sovereign decision of Cyprus to close its ports, but would instead not follow the Greek Cypriot policy to discourage any international trade via these ports.⁹⁴ As has been elaborated in the previous chapters, the international community has never officially supported the isolationist policies of the RoC and Greece towards the Turkish Cypriots and has never called for an economic embargo against the Turkish Cypriot community. Thus asking for loyalty from the Community in this instance is rather an unusual argument. Moreover, Article 3 of Protocol 10, which has been accepted by the RoC when signing the Accession Treaty, explicitly ensures that measures promoting the economic development of

92 Proposal for a Direct Trade Regulation, pp. 3.

93 Case C-339/00, *Ireland v. Commission* (2003) ECR I-11757.

94 Hoffmeister, pp. 219.

Northern Cyprus are not precluded. It would, indeed, be odd if implementation of this article constituted a breach of loyalty vis-à-vis the RoC.⁹⁵

As the only reason for not adopting the proposed Direct Trade regulation is the dispute about its adequate legal basis, it would be worthy to consider the objective in Protocol 10 that reflects the primary goal of the accession of Cyprus to the EU and which is in line with the main goal of the entire pre-accession period under the Association Agreement of Cyprus with the Community. As it has been stated previously, "...the accession of Cyprus to the European Union shall benefit all Cypriot citizens and promote civil peace and reconciliation, considering therefore, that nothing in this Protocol shall preclude measures with this end in view...".⁹⁶

It can hardly be disputed that the Turkish Cypriots have not benefited whatsoever from the accession of the RoC so far. The Commission's proposal which aims to establish "special measures to promote development of the Areas notwithstanding the suspension of the *acquis*"⁹⁷ is a part of the policy of non-discrimination envisaged in the accession and pre-accession documents by the EU. Even if the Direct Trade Regulation were to constitute *acquis*, it has been argued by some legal scholars that since the export from Northern Cyprus would fall within the EU Customs Union territory and not in the areas where it has been suspended, it may still be applied without breaching the law.⁹⁸

On the other hand, insisting on the fact that Article 1(2) of Protocol 10, which requires unanimity in the Council, is the only legally valid basis for the Direct Trade Regulation might be irreconcilable with the main goal of the EU accession of Cyprus, i.e. providing a benefit to all Cypriot citizens. Moreover, as the requirement of unanimity would almost certainly result in the regulation being vetoed, the requirement itself might be considered incompatible with the Article 3(1) of Protocol 10 which reads: "[N]othing in this Protocol [10] shall preclude measures with a view to promoting the economic development of the areas referred to in Article 1 [Northern Cyprus]".

It is needless to say that economic development is hardly possible for any entity that is completely isolated from the international economy. Bearing in mind that the provisions of the Green Line regulation have not alleviated the isolation of the Turkish Cypriots, let alone fostering trade, the Direct Trade regulation seems to be the only measure at the disposal of the EU that would be helpful in keeping its promises and would be consistent with its stated desire not to "preclude measures with a view to promoting the economic development" of the Turkish Cypriots. None

95 Ibid.

96 Protocol 10 to the Act of Accession, Preamble.

97 Proposal of the Direct Trade Regulation, recital.

98 Hoffmeister, pp. 217.

of the EU member states is expected to engage in action contrary to the provisions of the EU primary law, of which Article 3(1) of the Protocol 10 is a part. In light of the fact that direct trade is essential for economic development, preventing direct trade effectively equals to precluding the Turkish Cypriots from economic development, and is thus in conflict with the spirit of the key provisions of EU primary law.

Situating the continuing isolation in a broader perspective, the right to development is “*a universal and inalienable right and an integral part of fundamental human rights*”, as it has been stated by The UN Declaration on the Right to Development in 1986 and reaffirmed by the Vienna Declaration and Programme Action in 1993. That, of course, includes the equal right to trade in world markets.⁹⁹

99 Support for development as an objective of the EC external commercial policy has also been defined by the ECJ in the context of the case-law (C-45/86). For detailed analysis see “*Legal Opinion on the Commission Proposal for a Council Regulation on Special Conditions for Trade with Northern Cyprus (Direct Trade Regulation)*”, Türkiye Ekonomi Politikalar Arastirma Vakfi (TEPAV), Ankara 21 May 2007.

Part III

Conclusions and Recommendations

3.1. CONCLUSIONS

The conclusion of the foregoing analysis of the continuing isolation of the Turkish Cypriot community after the accession of the RoC to the EU is that the *de facto* policy of isolation imposed on the Turkish Cypriots is a result of political decisions. Neither does international law impose economic sanctions on a non-recognized entity nor has the international community ever adopted sanctions against the Turkish Cypriots. Nevertheless their isolation persists.

For the purpose of identifying unnecessary restrictions which led to the isolation of the Turkish Cypriot community, it is necessary to distinguish between the international legal scope of pursuing a policy of non-recognition and a policy of isolation towards a particular entity.

As we emphasized in the preceding pages, no effective measure has been taken so far by the international community and the EU to lift the isolation, despite promises given after the referenda in 2004. The most commonly spelled out concern has been an argument of recognition of the TRNC. Our opinion is that it is legally possible for the international community and for the individual states to give up the isolationist practices without jeopardizing the UNSC resolutions 541(1983) and 550(1984) as it also has been stated in the UNSG Kofi Annan's report S/2004/437 to the Security Council.

In particular, the restrictions that follow from international law with regards to direct trade and access to seaports and airports are limited. In the new situation after 2004, states may take steps towards lifting the isolation without violating international law. The Northern Cypriot ports are legal under international law, as it has also been affirmed by the EU. To establish direct air links between Northern Cyprus and other states might pose some technical difficulties but international law does not create obstacles *per se* against such direct flights.

As EU citizens, the Turkish Cypriots have a democratic right to be represented in the EU. Although international law and European law exclude the Turkish Cypriots from most EU structures, there are no insurmountable legal obstacles to inviting the Turkish Cypriots as observers to, for example, the European Parliament. Although the policy of non-recognition does impose certain restrictions on the EU

in establishing contacts with the TRNC, it does not preclude the establishment of (liaison) offices when these are necessary for operations that are not intended for maintaining official contacts. The current EU ‘avoidance’ policy is not required on the basis of obligations under international law.

The Green Line Regulation was not devised to bring an end to the economic isolation of the Turkish Cypriots, if adopted alone without the Direct Trade Regulation and the Financial Aid Regulation. In fact, its function has remained very limited and cannot be considered as an equivalent for or alternative to the Direct Trade Regulation.

Following the spirit, stated in the preamble of the Cyprus accession protocol and previously also in the Association Agreement of Cyprus with the Community, the accession of Cyprus to the European Union shall benefit all Cypriot citizens and promote civil peace and reconciliation. However, the Turkish Cypriots have not yet had the chance to benefit from the EU membership. It seems that the Turkish Cypriots do not have an alternative to develop economically without an access to free direct trade. The blocking of the Direct Trade Regulation seems contrary to Article 3 of the Protocol on Cyprus, constituting the EU’s primary law that requires no preclusion of measures with a view to support the economic development of Northern Cyprus.

With respect to what has been written in this report, we conclude that the isolation of the Turkish Cypriots is not legally sustainable.

One should not forget that lifting the isolations is likely to facilitate the potential talks on settlement too. Besides, both the Turkish Cypriot and the Greek Cypriot leaders have pleaded for reunification based on equal footing. In the aftermath of the simultaneous referenda conducted separately on the both sides of the island, equality must be taken literally and the representation of the Greek Cypriots in the EU structures should not pose an obstacle to such an equal footing. Moreover, it will most probably be received by Turkey as the fulfillment of its own preconditions for the normalization of relations and opening of ports and airports to the RoC flagged vessels.

3.2. Recommendations

It is therefore recommended by the authors of this report that:

- There are no legal obstacles against lifting the ban on direct trade, this ban on direct trade should be stopped.
- Since lifting the isolations would not go against the UNSC resolutions 541(1983) and 550(1984), as UNSG Kofi Annan stated in his report to the Security Council, the isolations should be immediately lifted.

- It is legally possible for the international community and for the individual states to give up the isolationist practices without jeopardizing their posture towards the binding legal documents like the reports of the UNSC.
- There is no prohibition under general international law to enter and leave seaports in the northern part of Cyprus.
- International law does not create obstacles per se against direct flights, therefore, like in the case of Taiwan, regulations can be expanded to start direct flights to the Northern part of Cyprus.
- It has to be understood that the *de facto* policy of isolation that has been developed is mainly a political choice.
- Lifting the isolations should be seen as a measure that would build mutual confidence towards any settlement attempt between the two communities.
- While putting an end to the isolationist practices directed towards the Turkish Cypriots, the possible solutions for ensuring political equality between the two communities should also be investigated in order to reach a more comprehensive resolution.

Timeline: Cyprus

A chronology of key events

- 1914** - Cyprus was annexed by Britain, after more than 300 years of Ottoman rule.
- 1925** - Cyprus became a British Crown Colony.
- 1955** - Greek Cypriots began guerrilla war against the British rule. The guerrilla movement, the National Organisation of Cypriot Combatants (EOKA), asked for *enosis* (unification) with Greece.
- 1955** - Archbishop Makarios of Cyprus declared his will for Cyprus to be unified with Greece.
- 1955** - A state of emergency was proclaimed in Cyprus.
- 1956** - Archbishop Makarios, who was seen as the head of the *enosis* campaign, was arrested and deported to the Seychelles by British authorities.
- 1957** - Britain accepted a NATO offer to mediate in Cyprus whereas Greece rejected the offer.
- 1959** - Britain, Turkey and Greece signed an agreement that granted Cyprus independence.
- 1959** - Archbishop Makarios returned to Cyprus after 3 years of exile and was elected President.

Independence

- 1960** - Cyprus gained independence after Greek and Turkish communities reached an agreement on the constitution. The 1960 Constitution of the Republic of Cyprus was prepared.
- 1960** - Treaty of Guarantee was signed. It gave Britain, Greece and Turkey the right to intervene if necessary. Britain retained its right over two military bases.
- 1961** - Cyprus became a member of the Council of Europe.
- 1963** - Makarios proposed constitutional changes which would abrogate power-sharing arrangements. Inter-communal violence erupted. The Turkish side withdrew from power-sharing arrangement negotiations.
- 1964** - A United Nations peacekeeping force was set up. Turkish Cypriots withdrew into defended enclaves.

- 1974** - The military junta in Greece supported the coup against Makarios. Soon after, Turkish troops intervened in the North as violence visibly rose. After the coup collapsed, Glafcos Clerides, president of the House of Representatives, became the new president.
- 1975** - Turkish Cypriots established their independent administration, with Rauf Denктаş as president. Denктаş and Clerides agreed to a population exchange.
- 1977** - Makarios died, he was succeeded by Spyros Kyprianou.
- 1980** - UN-sponsored peace talks resumed.
- 1983** - Denктаş announced the establishment of the Turkish Republic of Northern Cyprus (TRNC).
- 1985** - Talks resumed between Denктаş and Kyprianou, no agreement was reached.
- 1988** - Georgios Vassiliou was elected Greek Cypriot president.
- 1989** --Vassiliou-Denктаş talks were abandoned.
- 1992** - Talks resumed and collapsed once again.
- 1993** - Glafcos Clerides replaced Vassiliou as President.
- 1994** - European Court of Justice ruled that a list of goods, including fruits and vegetables, were not eligible for preferential treatment when exported by the Turkish Cypriot community directly to the EU.
- 1996** - Tension increased and violence erupted along the buffer zone.
- 1997** - UN-mediated peace talks between Clerides and Denктаş failed when the EU announced that it would begin membership talks with the Greek-led Cypriot government.
- 1998** - Clerides was re-elected to a second term of Presidency. The EU listed Cyprus as a potential member.
- 2001** - UN Security Council renewed its 36-year mission of peacekeeping forces at the buffer zone.
- 2001** - Turkey published a declaration saying if the Republic of Cyprus joins the EU before any reunification settlement, this would violate the 1960 treaty.
- 2002** - Clerides and Denктаş began UN-sponsored mediation talks.
- 2002** - A comprehensive peace plan was presented by UN Secretary General Kofi Annan which envisaged a federation with two constituent parts.
- 2002** - EU summit in Copenhagen invited Cyprus to join the EU in 2004, provided that the two communities agreed to the UN peace plan by early spring 2003.

Without reunification, only the internationally recognized Greek Cypriot part of the island would gain membership.

2003 - Tassos Papadopoulos was elected as the new President.

2003 - Turkish and Greek Cypriots crossed the island's dividing "green line" for the first time in 30 years.

2004 - Double referenda were held to accept the UN reunification plan. The plan was endorsed by the Turkish Cypriots but was overwhelmingly rejected by the Greek Cypriots.

The EU agreed to take steps to end the isolation of the Turkish Cypriot community.

EU ACCESSION

2004 - Cyprus became one of the 10 new states to join the EU, but did so as a divided island.

2004 - Turkey agreed to extend its EU Customs Union agreement to 10 new member states, including Cyprus.

2005 - Mehmet Ali Talat was elected as the new TRNC president.

2005 - Turkey offered a six-point action plan for opening ports and airports to RoC vessels.

2006 - The Property Commission was established in the Northern part as a local remedy to the ongoing Property problem on the island.

2006 - UN-sponsored talks between President Papadopolous and Turkish Cypriot leader Mehmet Ali Talat resulted in a plan proposing a series of confidence-building measures and contacts between the two communities.

2006 - EU-Turkey talks on Cyprus broke down over Turkey's refusal to open its ports and airports to the RoC flagged vessels. Ankara claimed the EU should end the isolation of the Turkish Cypriot community before Turkey could take any action.

2008 - AKEL leader Dimitris Christofias was elected as the new President of RoC as well as the new community leader.

Author Biographies

MARCEL BRUS

Marcel Brus is professor of public international law and law of international organisations at the University of Groningen in the Netherlands. Until September 2005 he was senior lecturer in public international law at Leiden University in the Netherlands. Between 1997 and 2002 he also taught public international law at the University of Oxford as holder of the joint Leiden-Oxford Post in Public International Law. He is a member of the Committee for International Law (CAVV) advising the Dutch Ministry of Foreign Affairs and hon. Secretary of the Netherlands Association of International Law.

MENSUR AKGÜN

Mensur Akgün is the department chair at Istanbul Kültür University, International Relations department and the director of the Foreign Policy Program at the Turkish Economic and Social Studies Foundation (TESEV). He is also a columnist at the daily Referans. He received his bachelor's degree first from the Middle Eastern Technical University and secondly from Oslo University in the fields of International Relations and Social Anthropology respectively. He completed his master's degree in Political Science at Oslo University and his doctoral studies at Boğaziçi University in Istanbul. Many of his earlier publications are in the field of international relations and Turkish foreign policy.

STEVEN BLOCKMANS

Steven Blockmans is senior research fellow in EU law and deputy head of research at the T.M.C. Asser Institute in The Hague. He frequently acts as a short-term expert in projects sponsored by the same donors to train judges, court clerks, prosecutors and lawyers of member states, (potential) candidate and ENP countries in EU law. He also serves as the long-term legal expert in a project sponsored by the European Commission to Support the Ministry of European Integration of Albania. Until 2002, he worked as a junior lecturer in the law of international organizations at the Europa Institute of Leiden University and as the Vice Editor-in-chief of the Leiden Journal of International Law. Since 1999, he has been a guest lecturer at the Netherlands Institute for International Relations. Steven Blockmans completed his studies at Leiden University on public international law and at l'Institut d'Etudes Politiques de Paris.

SYLVIA TIRYAKI

Sylvia Tiryaki is a faculty member at Istanbul Kültür University, International Relations Department and a senior research fellow and project coordinator on Cyprus at the Turkish Economic and Social Studies Foundation (TESEV). In addition, she is a columnist at the daily newspaper Turkish Daily News. Sylvia Tiryaki obtained her bachelor's degree in Law from Comenius University, Faculty of Law in Bratislava and completed her doctoral studies on 'The Harmonization of Slovak Law with European Union Law' at the same university. She has contributed to the analysis of the UN plan on the reunification of Cyprus ("The Annan Plan"), prepared by TESEV and presented to the foreign ministers of Turkey and the Turkish Republic of Northern Cyprus (TRNC). She has contributed to various academic journals and newspapers. Her research interests cover international law, international organizations, foreign policy and the Cyprus problem.

THEO VAN DEN HOOGEN

Theo van den Hoogen is professor of international and European law at Groningen University and co-editor of the Dutch Yearbook Peace and Security. He studied economics, law and international relations at the Universities of Tilburg and Groningen. Many of his earlier publications are in the field of international conflict studies and on national security and defence policies. More recently his research concentrates on policy-making in the European Union and in this field he wrote on enlargement issues and institutional reforms. He has held guest-chairs at the University of California and at Peking University. Previously, he has been chairman of the Netherlands Association of Peace and Research conflict.

WYBE DOUMA

Wybe Douma is a senior research fellow in EU law and the head of the European Law section at the TMC Asser Institute in the Hague. Wybe Douma studied law at the University of Groningen and the Eberhard Karls University, Tübingen. His research interests concentrate on European law, Dutch administrative law and international trade law. Previously he has served as a legal expert in projects on harmonisation with EU legislation in Bosnia Herzegovina and Russia.

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The EU membership of the Republic of Cyprus, represented only by the Greek Cypriots, created a unique legal status for the Turkish Cypriots, both under international and EU law. This legal status, or rather legal fiction, is accompanied by an international isolation of the Turkish Cypriot community which continues in spite of the change in the circumstances that arose in the aftermath of the simultaneous referenda on the federal future of the island in 2004.

This study aims to assess the legal validity of the continuing comprehensive isolation of the Turkish Cypriot community. It provides new insight into the historical dimension of the problem while discussing the presumed link between isolation and non-recognition. The second part of the report dwells on the role played by the EU in the continued political and economic exclusion of the Turkish Cypriots after the accession of the RoC in May 2004.

It should be emphasized at the outset that the isolation of the Turkish Cypriots has more than one dimension, and its political and economic impact should not only be seen in communal terms but also in terms of individual rights. Quoting the words of Turkish Cypriot Human Rights Foundation: “[Isolation] doesn't affect just the businessman trying to trade, but also the Turkish Cypriot teenager in the folk dance group, the young graduate or politician trying to make a career in the EU, the university student, the artist and even the Turkish Cypriot footballer (who could not participate in international contests).”

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