

CHAPTER 6

**PRO: AN APPRAISAL OF THE
FUNCTIONALITY OF ANNAN VI**

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With the majority of peace agreements facing implementation problems at a global scale², it is not surprising that questions about the political viability and workability of Annan Plan V featured prominently in the 2004 referendum campaigns of the two Cypriot communities. Preceding the referendum, one of the two major Greek Cypriot political parties, AKEL, justified its refusal to endorse the plan, citing issues of implementation, while in polls following the referendum the majority of Greek Cypriots (61.9%) stated they would support the plan if concerns on security and implementation were guaranteed.³ Similar arguments on security and implementation were put forward in the Turkish-Cypriot community, albeit with less success for the 'no' camp. This chapter evaluates three main arguments made by opponents of the plan: a) the analogy drawn between the Annan Plan and the Zürich-London Agreements of 1959; b) the criticism of federalism and consociationalism as unfair and dysfunctional; and, finally, c) Turkey's role and reliability in implementing the agreement, especially if it were denied EU membership. The chapter questions and criticizes the arguments and assumptions of the 'no' camp, while also recognizing important limitations and gaps in the Annan Plan V itself.

The Annan Plan and the Zürich-London Agreements

Critics of the UN proposed settlement in Cyprus (the 'Annan Plan') have drawn parallels between the proposed settlement and the 1959 Zürich-London Agreements which led to the establishment of the Republic of Cyprus.⁴ These Agreements, however, and their subsequent failure cannot be compared with the Annan Plan V or any other form of bicomunal bizonal federation proposed for the current political stalemate in Cyprus.⁵ The chapter presents the case that the two arrangements, the nature of the Cypriot society then and today, as well as the international environment influencing Cyprus, are not comparable and that such comparisons often imply what theorists of International Relations call a *false historical analogy*.⁶ In such instances, actors who look at their immediate neighbourhood or earlier historical experience often misapply 'the correct lessons of that case to a new situation which differs from it in important respects'.⁷

Consociationalism and Federalism

Analyses of the Annan Plan and the Zürich-London Agreements are made without distinguishing two interrelated concepts, that of consociationalism from federalism.⁸ Consociationalism (or power-sharing), among other characteristics⁹, requires power to be shared between majorities and minorities and it implies formal or informal veto rights for all parties.¹⁰ Federalism refers to situations where author-

ity is divided between the central and provincial governments, with both enjoying constitutionally separate competencies.¹¹ Federations can be consociations, as in the cases of Belgium, Switzerland or Annan V, but not all federations are consociations as suggested by the cases of United States and Australia or semi-consociations, such as Canada and India.¹² Finally, there are consociational agreements usually with territorially intermingled populations that do not take a federal form, such as post-1960 Cyprus, Lebanon and Northern Ireland after the Good Friday Agreement in 1998.¹³

In Cyprus, a consociational agreement which includes two federal units could be more stable and functional than the 1960s arrangement. Under Annan V, for example, each community will run its own domestic affairs, ranging from road infrastructure to health and social welfare. Thus, there will be less demand for common decision-making in most areas of daily public life, and hence, less chance of acrimony. In fact, in federations, constituent states have multiple options; they can decide to share the costs and benefits of a new infrastructure (i.e. a specialized hospital unit or sewage system in a major urban centre) or they can maintain their own individual programs.

Moreover, in every society there are moderates and hawks, as well as cycles when the former or the latter come to power. The management of daily affairs can take the form of close and cordial cooperation when moderates are in power and more distant cautious interaction when hardliners govern, with the risk of minimizing the benefits of cooperation. A federal system with flexible structures allows adaptation to changing circumstances and is fairly sensitive to shifts in leadership attitudes.

Under Annan, part of the decision-making relevant for a reunited Cyprus will be done at the European level. With the introduction of the Euro, there will be no need to coordinate policies on important monetary issues. Borders will be regulated in accordance with Schengen Agreement which has already abolished systematic border controls between participating members in most EU countries. Moreover, important legislation from fisheries to environmental regulation will be made in Brussels. In fact, the Europeanization of decision-making might be one reason why no federation has collapsed within the European Union, despite problems with emerging nationalisms in Belgium¹⁴, bitter feelings of injustice and victimization in the Basque country and Catalonia¹⁵, or the absence of any clear incentive for England and Scotland to stay together.¹⁶

This is not to say that the European Union makes the state opaque, quite the contrary. The Annan Plan has proposed the Belgian model concerning decision-making at the European level; it allows Cyprus to have a voice only when the two communities agree on an issue or to abstain in the event of a disagreement.¹⁷ This arrangement provides an incentive for the two sides to work together in areas of common interest. It also presents an opportunity to negotiate concessions at the EU level in return for concessions at the federal one, thereby minimizing conflict on both levels.¹⁸ More importantly, the EU provides a safeguard for functionality at the higher political level because it is against the best interests of its members to

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maintain a dysfunctional member or a collapsing federation. Partition of a federated Cyprus would imply similar considerations in Spain, the UK and Belgium, with unprecedented and undesirable consequences for the whole continent.

The Evolution of Political Structures since the 1960s

Another major difference in contemporary Cypriot politics compared with earlier decades is the way in which communities have evolved socially and politically. Several commentators, particularly from the 'yes' camp, compare the Tassos Papadopoulos administration with the administrations of the 1960s, when the latter served as a minister in Archbishop Makarios's cabinet. The Papadopoulos administration has certainly been retrospective in many ways, but the analogy with the 1960s is problematic. Fortunately, today's Cyprus is far removed from the era of disappearances, political assassinations and indiscriminate killing of ordinary civilians due to their ethnic background or because of political beliefs particularly in the Left.

On the one hand, the 1959 constitution was preceded by a period of intercommunal violence, the imprisonment of suspected EOKA sympathizers in camps manned primarily by Turkish Cypriot auxiliary forces to the British colonial rulers and forced dislocations of populations among both communities living in mixed areas.¹⁹ On the other hand, the 2004 referendum was preceded by amicable and occasionally emotional encounters between Greek and Turkish Cypriots, especially after the opening of the checkpoints in 2003.²⁰ More importantly, during this period, Turkish Cypriots gathered in tens of thousands in Nicosia to demonstrate for the reunification of the island, calling for the end of Rauf Denktash's era which started in the 1950s with the mass mobilization of Turkish Cypriots in favour of *taksim* (partition).

Cyprus fulfils several criteria to which scholars point to when they discuss factors influencing the success of federalism and consociationalism. An important criterion is how deeply divided a society is in terms of its ethnicity. Cyprus today is a moderately divided society compared to the deeply divided society of 1959 or other deeply divided societies around the world which experience regular violence. Brendan O'Leary argues that consociations may only be practical in moderately rather than deeply divided societies.²¹ Like other solutions, federalism and consociationalism are difficult to operate in deeply divided societies, especially as many choose these conflict management mechanisms when it is too late, after too much bad blood has been shed and central authority has been weakened to the extent that secession is possible. But when federalism and consociationalism precede deep division chances of success are great.

Cyprus meets other often-cited criteria. Federations are unlikely to fail in economically developed societies.²² In fact, there has been no example of a federation falling apart among the economically advanced countries. Evidently, the economy can play a moderating role as it brings together several overlapping interests and creates a strong incentive for everyone to maintain peace. It offers opportunities to exchange political concessions for financial redistribution and administer resources

to either confront or moderate extremist groups. In Cyprus, intercommunal fighting in the 1960s would have been much more costly for the two communities if it had meant the loss of millions of tourists (and tourist income). In a similar case that came close to separation, with the 1995 Quebec referendum (a result of a failure of the Charlottetown Accord in a popular referendum three years earlier), the economy and economic interests played a key role in saving Canada's future in Quebec.²³

Moreover, it is unlikely that any force in the island will challenge the settlement through violent means. Despite the polarizing effects of the referendum there were no major examples of physical violence. For the most part, the 'no' camp in both communities reacted in a polemical yet non-violent manner. As mentioned earlier, the social, political and economic characteristics of Cyprus and Europe today are fundamentally different from those of the 1960s.

Workability of Annan V

Opponents of Annan V argue that the plan is unfair and therefore dysfunctional. Former Dean of Indiana University and Rector of Intercollege in Nicosia Van Coufoudakis points out that 'the proposed system is dysfunctional, given the apparent veto powers granted to the Turkish Cypriots and the fact that disputes will be resolved by non-Cypriots, as in the case of the Supreme Court and the Central Bank'²⁴. Criticism also focuses on the disparity between decisions of the European Court of Human Rights (ECHR) and provisions on the Annan Plan on property and the right of return.²⁵ In many respects, the Annan Plan prioritizes the rights and security of Turkish Cypriots and the rights of post-1974 Turkish settlers, thus limiting rights and options for Greek Cypriots willing to resettle in the future Turkish Cypriot constituent state. It is important to identify some of these problematic provisions in the Plan in order to suggest potential improvements and realistic alternatives.

To begin with, the Turkish Cypriot veto is an essential characteristic of a consociational agreement in Cyprus. In theory, it is possible to have a federal arrangement which allows the two communities to run domestic affairs in their respective constituent states with decisions at the federal level being made by a simple majority irrespective of ethnic origin. Informally, an effort could be made to include Turkish Cypriots in this majority but this will fall short of endorsing a formal veto right for the Turkish Cypriot community. Canada, India and South Africa (for a short period after the end of the apartheid) have established such systems to varying degrees with relative success. Given the percentage of the Turkish Cypriots (in 1960 just above 18 per cent), removing the veto might initially seem a fair adjustment to the plan.

Yet there are several important concerns with the logic of this argument. Firstly, the consociational veto arrangement is not a product of the Annan Plan, but a central feature of the 1959 Agreements, recently reiterated in the statement of political equality included in the July 8th Agreement of 2006. It will be difficult to convince any of the sides at the negotiating table to give up what their respective com-

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munities consider inalienable and established rights. Certainly, critics are correct in pointing out that there is hardly any other minority of similar size that has gained such an arrangement elsewhere among democratic federations (the EU being a notable exception, if it is considered a federation).

Nonetheless, these considerations could not be the only criterion in judging a fair arrangement between groups. According to Will Kymlicka, an argument 'in defence of group-differentiated rights for national minorities is that they are the result of historical agreements, such as the treaty rights of indigenous peoples, or the agreements by which two or more peoples agreed to federate'.²⁶ Kymlicka emphasizes the importance of historic arrangements but recognizes that previous agreements can be made under duress, an argument that both communities in Cyprus can allude to if they wish to withdraw their support from previous agreements. He also addresses the equality argument which assumes that the state must treat its citizens with equal respect. Kymlicka emphatically states that there is a 'prior question of determining which citizens should be governed by which states'.²⁷ Finally, he argues that 'historical agreements signed in good faith give rise to legitimate expectations on the part of citizens, who come to rely on the agreements made by governments, and it is a serious breach of trust to renege on them'.²⁸

Moreover, contrary to conventional wisdom, minority vetoes could potentially add to the functionality of a peace settlement. On the one hand, in a majoritarian federation, there is a temptation not to take minority views seriously into consideration or to rely primarily on non-representative views of the minority. Moreover, if veto rights are informal the question of who to listen to, to what extent and under what circumstances remains undefined and vulnerable to cycles of moderation and escalation. On the other hand, properly crafted consociational arrangements could add a measure of certainty. To this end, the UN plan watered down the 1960s Turkish Cypriot veto significantly. Depending on the issue, a coalition which included 20 to 40 per cent Turkish Cypriots was proposed as a compromise in governing the federal structures.²⁹

During the Cyprus referendum, critics of Annan V argued that it was unfair for Cyprus to federalize, if countries such as Israel and Turkey remained majoritarian.³⁰ While in theory debatable, this argument does not serve any real purpose in Cyprus, since neither Turkey nor Israel is a model of successful ethnic conflict management. State repression, sub-state group terrorism and extensive human rights violations do not provide an attractive alternative to power-sharing. In fact, these two examples clearly demonstrate that majorities often abuse their position and that majoritarianism fails to resolve complex ethnic and national issues.

Still, critics of consociationalism make a fair point when they argue that minority vetoes can lead to 'minority tyranny' and deadlocks. This happens if the minority has extreme demands or tries to sabotage the system, even on the limited number of issues that need to be decided at the federal level. This was not possible in the Annan Plan, however, in either theory or practice. The proposed settlement allowed for an arbitration mechanism through the intervention of a Supreme

Court, comprising an equal number of Cypriot judges from the two communities and foreign judges appointed by the UN. The foreign judges were expected to be established international legal experts. Apart from making judicial decisions, the Supreme Court was to settle disagreements over the interpretation of the Annan Plan and resolve deadlocks at the executive level.

Critics of the proposed Supreme Court system argue that the introduction of a foreign arbitration element constitutes an unacceptable and undemocratic violation of Cypriot sovereignty.³¹ Yet, divided societies must be creative on the sovereignty question if they are to survive the bigger challenges they face; for example, China demonstrated this kind of creativity when negotiating reunification with Hong Kong by accepting the appointment of foreign judges in Hong Kong's Supreme Court.³²

Moreover, countries like Cyprus have already granted part of their sovereignty to the EU (at both executive and legislative levels) and to the ECHR (at the judicial level), in the expectation that the benefits achieved by participation in these institutions will outweigh the potential loss of sovereignty. On this point, the arbitration system proposed in *Annan V* prevents hardliners from sabotaging the system and, in principle, it moderates the views of the two communities during the power-sharing process. Going through the court can be lengthy and risky, often necessitating that sides reconsider their positions, especially since the court will reject unfair and unconstitutional demands, causing local and international shame. Further, decisions of international legal experts have a normative appeal and trigger interest beyond national boundaries. Like China on Hong Kong, parties in Bosnia have accepted limitations to the country's sovereignty and included provisions in the Bosnian constitution concerning foreign judges working with local institutions.³³

Consociational theorists recommend arbitration systems despite their often undemocratic character. Contrary to public expectations, arbitration systems are not meant to be ideal alternatives to power-sharing; they are not intended to stand in for the elected leaderships for very long. The Anglo-Irish Agreement signed in 1985 introduced an alternative arbitration system in the event that power-sharing between Unionists (Protestants) and Nationalists (Catholics) failed to produce a joint cabinet.³⁴ This provision was maintained after the signing of the Good Friday Agreement in 1998, allowing London, with the consultation of Dublin, to resume direct rule in the province. As in *Annan V*, this was criticised as undemocratic.

Yet Northern Ireland also offers a good case of arbitration mechanisms because soon after the signing of the Good Friday Agreements, there was a deadlock, exacerbated when the public voted for hardliners. This was particularly obvious after the victory of Unionist Ian Paisley in the 2003 elections. Paisley who 'spent most of his career deriding reform-minded unionists as traitors'³⁵ refused to share power with the Nationalists. Nevertheless, direct rule had a moderating effect, leading to the landmark St. Andrew agreement of 2007. There were no major sanctions against the voters in the province (except new water taxes that caused some reac-

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tions), but quite simply, local politicians could not survive without making important decisions themselves. Hence, by 2007, the two sides had reconsidered their views and reached a compromise to share power. Indeed, a former opponent of the Unionists said he 'was convinced Paisley was a changed man and his party had been transformed' while Paisley described Sinn Fein's support of the police agreement as miraculous.³⁶

As this example suggests, arbitration mechanisms are essential features of a consociational agreement. Peace agreements often fail, but if arbitration mechanisms are in place, arbitrators can maintain stability if a deadlock occurs but more importantly their presence discourages sides from reaching a costly deadlock in the first place. The Northern Ireland example suggests that even with the collapse of a peace process due to the emergence of anti-deal forces, consociational/arbitration arrangements can maintain stability - even transforming erstwhile uncompromising leaders into peacemakers. To cite other examples, Yugoslavia remained united until it lost its arbitrator, Marshall Tito³⁷ suggesting the need for institutional rather than personal arbitration mechanisms. Belgium does not have a formal arbitration system, but King Albert II can appoint the previous government as a caretaker government when parties fail to form a coalition government.

Finally, Bosnia is an arbitration system *par excellence*, where in addition to ECHR's appointed judges there is an Office of the High Representative, entrusted with overseeing the implementation of the Dayton Accord which ended the war. Despite the bitter experience of a devastating war and the subsequent emergence of nationalist parties, the consociational/arbitration system worked fairly well in stabilizing the country, even to the extent of reversing ethnic cleansing. Currently no Greek Cypriot refugees have been allowed to repatriate while in Bosnia, among the estimated 2.2 million people driven from their homes during the 1992-95 war, an estimated 1,015,394 had returned by 2006. More interestingly, an impressive 457,194 has repatriated under minority status in areas administered by another ethnic group.³⁸ The success in reversing ethnic cleansing can partly be explained by the authority exercised by the arbitrator, particularly the capacity to readjust policies and incentives in favour of voluntary repatriation.³⁹ The Office of the High Commissioner even had authority to sack elected officials when they prevented implementation of the accords.

In summary, a consociational system with elements of outside arbitration, while not without its flaws, is the least 'evil option' for divided societies. Majoritarianism can be problematic particularly when hardliners come to power and impose the 'tyranny of the majority'. Turkish Cypriots resent this option, and, in fact, cases such as Turkey and Israel show that it frequently leads to minority secession and political violence. Meanwhile, consociationalism without mechanisms to resolve deadlocks can be vulnerable to abuse when hardliners come to power and fail to reach mutually agreeable compromises. Only consociationalism with elements of arbitration, as in Annan V, can enhance power-sharing and moderation.

Nonetheless, the examples given above suggest that consociational and arbitration arrangements can take multiple forms beyond the Annan Plan. For example,

foreign Judges could be appointed by the ECHR (as in Bosnia) if the two sides fail to agree on the appointment of bicommunally-approved Cypriot judges. Another possibility is cross-voting, a system that could allow all Cypriots a double vote, one in their ethnic community and another (with a standardized influence weight of 10-20 percent) in the other community.⁴⁰ This system would turn Turkish Cypriots into an electoral minority in the Greek Cypriot community, while the Greek Cypriots would represent an electoral minority in the Turkish Cypriot community. Nominees could be appointed in the supreme court from the poll of the 'most cross-voted' politicians. Additionally, the electoral integration of the two communities would make elites accountable across ethnic lines and add a modicum of moderation to the political system. Admittedly, however, it might unfairly alienate hardliners if cross-ethnic electoral influence exceeds reasonable levels. Finally, politicians on both sides, as well as academics in Cyprus and elsewhere, have suggested a wide range of options that one should consider in moving beyond the 2004 plan.⁴¹

Fairness and Viability

The question of fairness is central in endorsing the Annan Plan and is highly relevant, not only because it affects functionality, but also because it raises important ethical and practical considerations. Citing international human rights law, the principles of EU *acquis communautaire*, and the need for the settlement to be perceived as just (if it were to be durable), the Greek Cypriot side in the negotiations spoke for the right of refugees to return to their homes.⁴² There is an established literature in human rights studies advocating the applicability of universal norms and high standards of retributive justice across similar lines. Others emphasize political expediency, the rights of new owners and the primacy of security concerns.⁴³ Based on this reasoning, the Turkish Cypriot leadership argued that realities on the ground, distrust, security issues and the principle of 'bizonality' dictated that residence should be strictly controlled.⁴⁴

The UN suggested a compromise where more than half of the Greek Cypriot refugees were to return under Greek Cypriot administration though a new territorial adjustment. For the remaining refugees, it delinked the unrestricted second-house residency right from full property restitution and voting as a permanent resident. Aiming to satisfy both human rights and security concerns, the UN suggested that Greek Cypriots could reside in the north but under a number of temporary and permanent restrictions in their voting rights. As for properties it roughly allowed restitution of one third of the former properties and compensations for the rest. The idea of delinking refugee resettlement from political and electoral competition could be justified by political expediency but contested on normative grounds since it prioritizes the rights of a new group of owners/citizens over the rights of a formerly indigenous group.

The formula of 'post-settlement readjustment' introduced in⁴⁵ provides an alternative to the Annan V arrangement. Refugees will be able to have more choice on what they could do at a personal level and no restrictions in settling, voting or even

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enjoying cultural autonomy in an area administered by another community. If final arrangements deviate significantly from pre-agreed benchmarks, then post-settlement readjustment will be introduced in order to preserve the original balance of the plan. The role of arbitration mechanisms could be crucial in this process since the formula requires a mechanism of renegotiation. This arrangement could maximize the functionality of settlement, by introducing a quantifiable system of monitoring the contribution of each side to 'human rights issues and needs of the other side'. More importantly, post-settlement adjustments could serve as incentives (financial, political and demographic) to each side thus facilitating a smoother refugee repatriation while preserving the original balance of the agreement against unexpected demographic scenarios. For instance, instead of naturalizing Turkish settlers immediately as suggested in Annan V, phases of naturalization could be delayed for the post-settlement period taking into consideration a number of factors including the contribution of settler communities in facilitating refugee repatriation. Post-settlement adjustments could reward local communities, actively assisting, refugees in their resettlement efforts, and they can help rebalance the resettlement if demographic realities shift disproportionately against the interests of any of the two communities⁴⁶.

The viability of a settlement depends largely on resolving the refugee issue. Opponents of the plan in the Turkish Cypriot community should be criticised for ignoring the rights of Greek Cypriot refugees and for advocating more restrictions on their rights of resettlement, property reinstatement and voting rights. Kymlicka's work, cited above to defend the historic rights of the Turkish Cypriots, also makes a clear argument for the rights of indigenous people and suggests directions on how the Turkish Cypriot state could resolve the issue. Both constituent states should be multicultural and welcoming to members of the other community. In Bosnia, it was decided that the federal entities cannot be considered exclusively Serbian, Croat or Bosnian Muslim; rather, they must assume a multiethnic character. Ironically, for Greek Cypriot critics of Annan Plan V, this decision was made with the votes of foreign judges—against the wishes of some local judges aiming for ethnic purity.

Would Turkey implement the plan?

Critics of the Annan Plan make two opposing arguments concerning Turkey and the European Union. Optimistic critics on the Greek Cypriot side have argued that 'after 1 May 2004 Cyprus would have been in the strongest negotiating position since 1974' and that 'the application of EU laws and regulations will protect more effectively the rights of all Cypriots'⁴⁷. Pessimistic critics maintain that Turkey would not implement the agreement, especially if it were to be denied EU membership⁴⁸. Even though more than half of the Greek Cypriot refugees would have returned under Greek Cypriot administration (probably the most significant concession to the Greek Cypriot side in the settlement), critics argued that Turkey would not give up the territory in northern Cyprus.

The first argument has been proved wrong so far, judging from the failure of the

Papadopoulos government to gain any tangible concessions in the post-Annan period. Proponents of the first thesis would argue that it is too early to judge since they expect concessions along Turkey's EU accession path particularly shortly before its accession to the EU. While plausible, structurally it will be difficult to coordinate Turkish accession with simultaneous implementation of a last-minute settlement in Cyprus. The second argument pointing to the possibility of Turkey being denied membership has some merit but adds little to the debate. For one thing, it is generally agreed that failure to integrate Turkey into the EU will affect Cyprus. Turkey is a country with many unknowns, because of the internal struggle between the military and the reformists. Certain risks are generic to all settlements, however, even outside the EU, Turkey will have to honour an agreement because of its political and economic linkages to world financial markets and important decision-making centers.

Moreover, the Annan Plan V provides a fairly good strategy for minimizing the risk to Cyprus. Turkey's obligations would only start when the Turkish Grand National Assembly (TBBM) ratifies the settlement (in another words, the Plan gave a veto right to the Turkish Parliament before the unification process starts). Arguably, any domestic challenges to the settlement, including reactions from the military, would take place before the ratification and before Cyprus becomes a federal republic.

For another, the basic provision of the Annan Plan is to link a number of self-enforceable concessions from Turkey with the country's accession to the European Union (ibid).⁴⁹ The logic of this linkage was to minimize the 'ambiguity and hope factor' entrenched in the negotiations. Not surprisingly, critics in Turkey feared that concessions in Cyprus would not 'pay off' if Turkey was to deny EU membership. By linking settlement provisions to Turkey's final status in the EU, the UN effectively produced two types of plans, one for each scenario: a more favourable one for Turkey with no accession, and one more favourable to the Greek Cypriots accompanied by Turkey's EU membership. By linking these two issues, the UN aimed for self-enforceable incentives for everyone to work towards the best scenario of including Turkey in the EU. On the negative side, critics are right in pointing out that this linkage or the original starting point of the arrangement is far from ideal, as it makes the basic human rights of Greek Cypriot refugees subject to a larger geopolitical puzzle, in which Cypriots have little say. In a final analysis, though, the content of the linkage can change in the future, and its general logic carries fewer risks for all sides than the 'wait and see' options of the anti-deal camp.

Conclusion

This chapter has focussed on evaluating the main arguments of the Annan Plan's opponents. To this end, it looks at the analogy drawn between the Annan Plan and the Zürich-London Agreements of 1959, determining that such an analogy is inappropriate and suggesting a number of reasons why federalism and consociationalism are applicable in Cyprus today. Moreover, it reassesses the argument that the institutional arrangements in the Plan are dysfunctional in Cyprus and suggests

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that the logic of the proposed settlement is superior to majoritarianism. Finally, the chapter deals with the fears and expectations regarding Turkey's role. It concludes that the option of negotiating the settlement before Turkey joins the EU through a linkage between accession and self-enforcement improvements for the Greek Cypriot community, as suggested in the Annan Plan, is superior to the risky and prolonged 'wait and see' strategy. The chapter also recognizes several merits in the empirical and normative critiques against the Plan, suggesting the need for a new dialogue 'beyond the Annan plan'. In considering possible future improvements, the chapter suggests the need for a reformulated arbitration system and an alternative electoral system based on cross-voting, which could enhance moderation across ethnic lines. Finally, it identifies a mechanism for international monitoring and incentives in the implementation process concerning key issues such as refugee rights and repatriation.

ENDNOTES

1. The author would like to thank Adrian Guelke, Alpay Durduran, Emine Erk, Erhun ahali, Erol Kaymak, Kamil Kayral, George Vassiliou, Hasan Tacoy, Joseph Joseph, Kudret Özersay, Maria Hadjipavlou, Nikos Trimikliniotis, Oncel Polili, Osman Ertu , Phedon Phedonos, Roberto Belloni, Sevgül Uluda , Tomazos Tselepis, Yücel Vural and the editors of this volume for sharing their thoughts with me or for providing additional information for this chapter. Naturally, they carry no responsibility for its final content.
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CHAPTER 7

**CONTRA: CONSTITUTIONAL STRUCTURE
OF THE ANNAN PLAN***Achilles C. Emilianides***Introduction**

This chapter aims to analyse some of the main constitutional issues regarding the fifth version of the plan of the former Secretary-General of the UN, Kofi Annan, for the solution of the Cyprus problem. The first part addresses the question of establishing a new state of affairs, both as regards procedural problems, as well as with respect to the issue of state succession. It will be argued that the method of establishing the new state of affairs was deeply undemocratic and it satisfied Turkey's aim for the partition of the island. The second part of this chapter considers the two main principles of the constitutional structure of the new state of affairs, namely the principles of increased bi-zonality and political equality, and examines the issue of the Turkish settlers. It is suggested that the constitutional structure was based upon division and discrimination and not upon democracy or the protection of fundamental rights. The third part of this chapter focuses on the constitutional character of the new state of affairs, including the executive, the legislative and the judiciary, as well as the position of the United Cyprus Republic (UCR) as a member of the EU. It will be argued that the intended UCR would be unviable and it would not have sufficient constitutional guarantees in order to function properly. The fourth and final part of this chapter will argue that the UCR envisaged in the Annan Plan would have resulted in Cyprus becoming a servant state – a protectorate.

Establishing a New State of Affairs**Procedural Problems**

The Annan Plan was submitted for approval in separate and simultaneous referenda on 24 April 2004 with an intended aim to establish a new state of affairs. The UN procedure was highly problematic for several reasons. Firstly, no collective body representing the people of Cyprus had participated in the formation of the plan submitted for approval in the referenda. Nor had the plan been subject to public deliberation within such a collective body, as is the standard practice.¹ Moreover, the elected president of the Republic of Cyprus, who represented the Greek Cypriots in the negotiations had not approved the Annan Plan. The submitted Plan was the result of the exercise of Annan's unfettered discretion, who, in an unprecedented act, had finalised the Plan himself, even where Federal Laws were concerned.²

Essentially the people of Cyprus were called upon to approve three constitutions, namely the federal constitution and the constitutions of the two constituent states, 122 federal laws and 1134 international treaties, namely a total of approximately 10,000 pages out of which only 178 had been translated into Greek and Turkish. While it is understandable that the people need not express an opinion on the com-