

ACCESSION ASPIRATIONS DEGENERATE: A NEW CHAPTER FOR TURKEY AND THE EU

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ABSTRACT

Political and judicial events in 2009 severely undermined Turkey's negotiations to accede to full membership in the European Union ("EU"). The ongoing accession dialogue has proven largely unproductive of its aims, and these new events have clarified the negative environment engulfing the process and warrant the conclusion that Turkey and the EU are better served by recognizing this reality and moving forward to a more constructive chapter of collaboration.

*In the June 2009 European Parliamentary elections, rightist parties inhospitable to Turkey's EU aspirations won large numbers of seats amid a campaign in which political rhetoric dangerously broadened the range of acceptable criticism of immigration, Islamic culture, and Turkey itself. Concurrently, EU organs and Member States continued an ongoing policy of scrutinizing Turkey's progress to accession with a finer lens than was ever used before, and in fact vetoing the start of negotiations in many chapters of the EU *acquis communautaire*. Finally, the European Court of Justice issued its powerful *Apolostolides v. Orams* judgment, and the voters of the northern Cypriot community elected a new nationalist, right-wing government known to oppose the United Nations ("U.N.") plan to reunite Cyprus on a federal, bi-zonal basis. Both of these latter developments further lessened the likelihood of progress in the U.N. negotiations to resolve the Cyprus division, one of the keys to Turkey's own EU accession aspirations.*

All of these new developments combine to render Turkey's accession to full membership in the EU improbable in this era, supporting the conclusion that Turkey and the EU should modify the present, unfruitful accession discussion and advance to a new, realistic framework for constructive dialogue and collaboration.

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I. INTRODUCTION

The conventional discussion of the past two decades regarding Turkey and its accession to the European Union may now be relegated to the past, allowing the EU-Turkey relationship to advance to a more realistic and fruitful chapter. Recent political and judicial events lay bare the futility of the arduous accession dialogue with a relieving clarity. The political impact of emerging concrete facts breaks through the previous aspirational dialogue and exposes its impracticality and even its layer of destructive pretense.¹ That dialogue has proven largely unproductive of its stated aim to gain Turkish acceptance into the EU, frustrating its participants, and generating broad, negative reactions.² Its demise is clarifying and may be a

1. The EU's handling of Turkey's enlargement process has been "one of the (European) Union's clumsiest and most damaging foreign policy failures" with French and Austrian politicians "rushing to declare that Turkey could never join the EU, no matter what the EU's leaders had just unanimously agreed." Kirsty Hughes, Opinion, *An EU Muddle with Global Ramifications; Turkey and Europe*, INT'L HERALD TRIB., Aug. 24, 2007, at 6.

Director of the International Crisis Group, Hugh Pope, finds an element of dishonesty in the current accession discussion portraying the accession as imminent, and therefore, unrealistically dangerous. Hugh Pope, *Privileged Partnership Offers Turkey Neither Privilege Nor Partnership*, TODAY'S ZAMAN, June 23, 2009, <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=178770&bolom=109>.

2. Public opinion in both the EU and Turkey has been negative towards the accession process. See, e.g., KATINKA BARYSCH, CENTRE FOR EUROPEAN REFORM, WHAT EUROPEANS THINK ABOUT

good thing. These recent events make clear now that Turkey will not, in this era, be accepted into full membership in the European Union.

Such a negative conclusion runs contrary to massive efforts and extensive achievements toward Turkey's accession—and surely contrary to the higher-minded hopes of many.³ The European Commission's 2008 Progress Report extensively details those efforts.⁴ Turkey and the EU have dedicated substantial monetary resources toward legal and economic harmonization necessary for accession, and Turkey has already accomplished broad—even historic—law reform.⁵ With the “EU acting as a catalyst—and *demandeur*—for reform,” Turkey has undergone a radical process of political, economic, and social change.⁶

In a period of ten years, the Turkish Constitution was amended numerous times, followed by complementary legislative reforms, representing “the most significant political transformation the Republic of Turkey had experienced since the introduction of multiparty politics in 1945.”⁷ Notably among other reforms, the death penalty was abolished, torture was outlawed, minorities were given greater protection, Kurds were given greater freedoms, and the army's role in government was reduced.⁸ The Customs Union between Turkey and the EU is in place,

TURKEY AND WHY 1 (2007), http://www.cer.org.uk/pdf/briefing_kb_turkey_24aug07.pdf. A 2009 survey conducted by Istanbul's Bahçeşehir University revealed that 80% of Turkish respondents believed that the EU would not permit Turkey's accession, no matter what Turkey did. *Love-Hate Relationship of Turkey with the EU*, HÜRRIYET DAILY NEWS.COM, <http://www.hurriyet.com.tr/english/domestic/11765414.asp?scr=1> (last visited June 1, 2009). Three-quarters of respondents thought that the EU wanted to dismantle Turkey. *Id.* “In 2009, the Turkish public very largely lost faith in the EU and Europe. The prospect of EU accession has largely faded, given the clear messages from Germany's Angela Merkel and French President Nicolas Sarkozy.” Özdem Sanberk, *We Must Not Let Political Blindness Triumph in Cyprus Again*, TODAY'S ZAMAN, June 16, 2009, <http://www.todayszaman.com/tz-web/dtaylor.do?load=delay&link=176602&bolun=109>.

3. This conclusion also runs counter to the author's previous writings in favor of Turkey's accession. See, e.g., Patrick R. Hugg, *The Republic of Turkey in Europe: Reconsidering the Luxembourg Exclusion*, 23 *FORDHAM INT'L L.J.* 606 (2000).

4. *Turkey 2008 Progress Report Accompanying the Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2008–2009*, COM (2008) 674 (Nov. 5, 2008) [hereinafter *Turkey 2008 Progress Report*].

5. *Communication from the Commission to the Council and the European Parliament: Enlargement Strategy and Main Challenges 2008–2009*, at 4, 44–49, COM (2008) 674 final (May 11, 2008) [hereinafter *Enlargement Strategy 2008–2009*] (detailed account of progress and additional reform needed).

6. Kirsty Hughes, *The Political Dynamics of Turkish Accession to the EU: A European Success Story or the EU's Most Contested Enlargement?* 16 (Swedish Inst. for European Policy Studies, Report No. 9, 2004), available at http://www.sieps.se/en/dokument_/download-document/27-20049.html.

7. Ioannis N. Grigoriadis, *Turkey's Accession to the European Union: Debating the Most Difficult Enlargement Ever*, SAIS REV. INT'L AFF., Winter–Spring 2006, at 147, 149 (2006).

8. *Id.* at 147, 148–49.

annually yielding over €100 billion in bilateral trade.⁹ Countless meetings of EU and Turkish officials have convened to guide the importation of the EU's *acquis communautaire*, with its many thousands of pages of rules and regulations, into the Turkish legal system. Significant to legal science, Turkey's efforts toward adopting the EU *acquis* represent a "unique experiment in using international harmonization as a tool in implementing a comprehensive reform strategy."¹⁰ Finally, many political and social leaders at the highest levels have broadly publicized the case for Turkey's accession.¹¹

Regrettably, the political will in Turkey and in EU Member States opposing its accession has shifted, as Turkey's reform efforts have slowed and the anti-Turkey rhetoric, described below, in some Member States has become extreme.¹² Some Turkish commentators have argued that EU accession is not likely,¹³ and public opinion in the EU and Turkey has likewise shifted against Turkey's accession.¹⁴ "Enlargement fatigue" in Western Europe, the current economic crisis, and resistance to Turkey's accession are leading factors pushing the candidacy further into jeopardy.¹⁵ Moreover, the rejection of the EU's Constitutional Treaty, the

9. *Turkey 2008 Progress Report*, *supra* note 4, at 5. Turkey has become the EU's seventh largest trading partner. *Id.*

10. TURKEY: ECONOMIC REFORM & ACCESSION TO THE EUROPEAN UNION, at xviii (Bernard M. Hoekman & Sübidey Togan eds., 2005), available at http://siteresources.worldbank.org/INTRANET/TRADE/Resources/Pubs/Turkey_BHoekman&STogan_book.pdf (providing an extensive review of Turkey's economic progress toward and implications of its joining the European Union). The Turkish example can be especially "relevant for other countries that may seek to use a strategy of 'deep integration' with a large, developed country or common market as a focal point and mechanism for undertaking both trade-related and regulatory reforms." *Id.*

11. See, for example, Olli Rehn's 2008 speech, emphasizing the strategic importance of Turkish-EU cooperation especially as instability threatens the Caucasus region. Olli Rehn, EU Enlargement Commissioner, Keynote Address at Bosphorus Conference: Turkey and the EU: A Win-Win Game (Oct. 10, 2008) (transcript available at http://www.cer.org.uk/articles/speech_rehn_bosphorus_10oct2008.html). U.S. President Barack Obama endorsed Turkey's accession in a speech to the Turkish Parliament. President Barack Obama, Remarks to the Turkish Parliament (Apr. 6, 2009) (transcript available at http://www.whitehouse.gov/the_press_office/remarks-by-president-obama-to-the-turkish-parliament/).

12. Thomas Seibert, *Turkey's EU Bid No Longer Viable*, NATIONAL (U.A.E.), June 16, 2009, <http://www.thenational.ae/article/20090617/FOREIGN/706169832/1013/NEWS> (recounting German, French, and Turkish positions). Turkey's first government minister for EU affairs, Egemen Bagis, acknowledged that he does not find it realistic to expect Turkey's accession by 2014. *Id.* The European Commission has called on Turkey to "renew its political reform effort." *Enlargement Strategy 2008–2009*, *supra* note 5, at 1.

13. See, e.g., Michael Van Der Galien, *Turkey and the EU: Forget About It*, HÜRRIYET, May 21, 2009, at 11.

14. See *supra* note 2.

15. Posting of Katinka Barysch to Centre for European Reform Blog, <http://centreforeuropeanreform.blogspot.com/2009/02/why-enlargement-is-in-trouble.html> (Feb. 24, 2009, 14:39). That Cyprus

difficult birthing of the Lisbon Treaty, and the divisions over EU economic cohesion in the current economic downturn suggest that today's EU will not offer the kind of strong leadership in marshaling the political forces needed to successfully push through Turkey's already controversial accession negotiations.¹⁶

The EU and Turkey need each other for so many reasons; it is natural and prudent for them to strive for closer cooperation. Economics surely offers the leading reason, as the volume of trade grows, but energy and security concerns conduce the same co-dependence.¹⁷ In 2008, the European Commission concluded that Turkey's strategic importance to the EU has increased in recent times "in key areas such as energy security, conflict prevention and resolution and regional security in the Southern Caucasus and the Middle East."¹⁸ The July 2009 agreement, signed in Ankara by leaders from four EU countries and Turkey, to go forward with the Nabucco pipeline to deliver natural gas from the Caspian Sea to the EU underscores this strategic location and the parties' eagerness to work together towards progress.¹⁹ Just as Germany and France could agree in the 1950s to deconstruct old national resistances for the sake of economic recovery and security, so, too, can Turkey and the EU do the same with their complementary resources in this period of hyper-trade-dependence and instability in eastern Europe, western Asia, and the Middle East.

The well-known and well-worn reasons for and against Turkey's accession have been explicitly and repeatedly articulated.²⁰ Turkey is not

is holding Turkey hostage to gain leverage in the talks for the island's reunification is another key factor. *Id.*

16. "An EU that is weak and divided in general, may stumble when faced with the political management of the Turkish accession process." Hughes, *supra* note 6, at 95. Negative attitudes toward Turkey's possible accession to the EU were a factor in the 2005 French and Dutch rejections of the Constitutional treaty. CHRYSOSTOMOS PERICLEOUS, *THE CYPRUS REFERENDUM: A DIVIDED ISLAND AND THE CHALLENGE OF THE ANNAN PLAN 73* (2009).

17. William H. Park, *The Security Dimensions of Turkey-EU Relations*, in *THE EU & TURKEY, A GLITTERING PRIZE OR A MILLSTONE?* 127 (Michael Lake ed., 2005). See also *Dreams from Their Fathers*, *ECONOMIST*, July 25, 2009, at 23–24. Turkey's strategic location bridging the Middle East and Europe offers valuable military and security capabilities, and can critically serve "as a potential transit route for Europe-bound natural gas from energy-rich Azerbaijan and Central Asia, as well as from Iraq (and eventually Iran)." *Id.*

18. *Enlargement Strategy 2008–2009*, *supra* note 5, at 1.

19. Delphine Strauss, *Leaders Push Ahead with Nabucco Pipeline*, *FIN. TIMES*, July 13, 2009, http://www.ft.com/cms/s/0/cd846434-6f93-11de-bfc5-00144feabdc0.html?ncklick_check=1. Turkey also has signed cooperation agreements allowing Russia to use Turkish territorial waters in the Black Sea for its South Stream pipeline project. "Sitting at the crossroads of the energy-rich Middle East and the former Soviet Union, Turkey has unique leverage as a transit hub for gas." *Turkey and Russia: Old Rivals, New Partners*, *ECONOMIST*, Aug. 13, 2009, at 47–48.

20. See, e.g., Antonio Missiroli, *Crossing the Bosphorus: Turkey's Accession to the European Union*, *BROOKINGS*, Oct. 1, 2004, www.brookings.edu/opinions/2004/1001europe_missiroli.aspx?p=1

geographically in Europe; Turkey is not culturally in Europe; Turkey has no true democratic tradition; Turkey bears a regrettable record of torture. Further, it is unthinkable that such a massive, poor, Islamic country would be allowed to enter the EU, either at the frequently discussed date of 2014 or later,²¹ and then immediately become its largest, most populous Member State,²² drain the EU budget,²³ and vote in the Council and Parliament with the political strength of Germany.²⁴ “As for power, Turkey’s membership in the EU will have a big impact. Under either the Nice Treaty or the Constitutional treaty rules, Turkey would be the second most powerful member of the EU 29. . . . Plainly this situation might decrease the acceptability of . . . Turkey’s membership.”²⁵

Finally, Turkey’s accession would seriously alter the balance in EU policy-making, drain the EU’s structural and agriculture funds, and flood Europe with Turkish workers.²⁶ The geopolitical center of Europe would be moved eastward by Turkey’s inclusion, weakening the traditional French-German leadership axis, and ultimately diluting the EU to no more than a less cohesive, Anglo-Saxon free trade zone.²⁷

To the contrary, Turkey’s proponents insist these arguments are either untrue or are outweighed by the compelling reasons for Turkey’s admittance into the European family. First, one could emphasize that Turkey and the Turkish people are already part of the European family:

(Senior research fellow Missiroli summarized arguments for and against Turkey’s accession.). *See also* Bahri Yilmaz, *The Relations of Turkey with the European Union: Candidate Forever?* 15 (Center for European Studies, Working Paper No. 167, 2008) (addressing Turkish-EU relations).

21. The European Council Summit in December 2004 acknowledged that Turkey’s accession negotiations could not be concluded until an agreement was reached on the financial framework for the 2014 cycle. Hughes, *supra* note 6, at 10. Enlargement Commissioner Olli Rehn stated in 2008 that he expected Turkey to enter the EU in ten to fifteen years “should it continue reforms decisively.” *EU Plans New Accession Negotiations with Turkey at Critical Time*, DEUTSCHE WELLE, Apr. 21, 2008, <http://www.dw-world.de/dw/article/0,2144,3281206,00.html>.

22. “Turkey is likely to have a population larger than Germany’s 82 million by 2020, if not earlier.” TURKEY: ECONOMIC REFORM & ACCESSION TO THE EUROPEAN UNION, *supra* note 10, at xxxi.

23. If existing rules for economic contributions to and receipts from the EU budget were used, Turkey would become a net payee of some €12 billion, representing 14% of the total EU budget. *Id.* at xxxii.

24. Grigoriadis, *supra* note 8, at 156.

25. Richard Baldwin & Mika Widgrén, *The Impact of Turkey’s Membership on EU Voting*, in TURKEY: ECONOMIC REFORM AND ACCESSION TO THE EUROPEAN UNION, *supra* note 10, at 337.

26. Grigoriadis, *supra* note 8, at 153. European integrationists fear that Turkey’s accession would further dilute the European cohesiveness, pushing it toward a less supranational organism. *Id.* at 152–53.

27. Ioannis Michaletos, *The Turkish-European Union Accession Negotiations: Probable Outcomes*, RESEARCH INSTITUTE FOR EUROPEAN AND AMERICAN STUDIES, Feb. 17, 2007, http://www.rietas.gr/index.php?option=com_content&view=article&id=196&catid=18&Itemid=75.

Turkey has more territory and citizens on European soil than several other EU countries; Member State Cyprus lies farther east than most of Turkey; and Turkey has been a part of political Europe for centuries.²⁸

The arguments that locate Turkey outside European history and geography cannot withstand analysis. For more than four centuries the Ottoman empire shared and shaped the political and strategic future of the continent. During the late 19th and early 20th century, it became the “sick man of Europe”. Even today, Turkey’s historical and economic influence continues to be substantial.²⁹

Moreover, Turks were invited to Germany and other European countries to work beginning in the 1960s,³⁰ and today four and a half to five million people of Turkish descent live in the EU,³¹ with over nine million more Turks living on the eastern side of the Bosphorus in Turkey.³² Turkey would “add a young and dynamic economy to a sluggish and ageing EU.”³³ Europe would benefit economically, politically, and militarily by embracing a country on the geographic seam between Europe and the Middle East. The EU’s common foreign and security policies would gain exponentially from Turkey’s strong military force and its strategic location.³⁴ It is also morally compelling to engage the diverse European and Asian parts of humanity into a single region to ameliorate

28. Turkey has been a member of almost all pan-European organizations from NATO and the OECD to the Council of Europe, “and is, in many ways, closer to the EU than any other non-member.” Pope, *supra* note 1.

29. Tariq Ramadan, Comment and Debate, *Turkey Is Part of Europe. Fear Keeps It Out of the EU*, GUARDIAN (London), at 33.

30. Colin Nickerson, *A Lesson in Immigration, Guest Worker Experiments Transformed Europe*, BOSTON GLOBE, Apr. 19, 2006, at A1. In 1961, the first year of Germany’s guest worker program, seven thousand Turks entered that country to work. *Id.*

31. One source estimates that 5.2 million Turks live in the twenty-seven EU countries. *Experience of Euro-Turks*, TURKOFAMERICA, Oct. 15, 2007, http://www.turkofamerica.com/index.php?itemid=174&id=167&option=com_content&task=view (citing FARUK ŞEN, EURO-TÜRKLER: SAYILAR, İSTEMLER, ANALİZLER VE YORUMLAR [EURO-TURKS: THE PRESENCE OF TURKS IN EUROPE AND THEIR FUTURE] (2007)).

32. About ten percent of Turkey’s population, over seven million people, live in the strictly European part of Turkey west of the Bosphorus and Sea of Marmara, which is a larger population than in at least eleven present EU Member States. See TURKEY: A COUNTRY STUDY 75 (Helen Chapin Metz ed., 5th ed. 1995), available at <http://countrystudies.us/turkey/18.htm>; Europa: Member States of the EU, http://europa.eu/abc/european_countries/eu_members/index_en.htm (click on each country on the map for population information) (last visited Oct. 3, 2009). Significant Turkish immigrant communities also live in Germany, France, Austria, the Netherlands, the United Kingdom, Belgium, and Denmark. Hughes, *supra* note 6, at 74 n.51.

33. Enlargement & Turkey, Centre for European Reform, http://www.cer.org.uk/enlargement_new/index_enlargement.html (last visited Oct. 3, 2009).

34. Patrick Seale, *Turkey Clears a Hurdle into Europe*, AGENCE GLOBAL, Dec. 20, 2004, <http://www.agenceglobal.com/article.asp?id=356>.

historical inequalities in rates of development and to forge future advances together. Finally, of course, Turkey has been repeatedly promised membership by the EU³⁵ upon the satisfaction of the standard entrance obligations.³⁶ In 1999, the EU Heads of State or Government, acting in the European Council, pronounced unequivocally:

The European Council welcomes recent positive developments in Turkey as noted in the Commission's progress report, as well as its intention to continue its reforms towards complying with the Copenhagen criteria. Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to other candidate States.³⁷

However, the official, hortatorial pronouncements and, indeed, the logic of the overall debate are subverted by a fundamental structural fault in the EU constitutional architecture. Every Member State must consent to every new member's accession, with no exceptions.³⁸ Member States, moreover, have vetoes on vital threshold decisions to proceed in the stages of the negotiation process.³⁹ In 2004, then President of the Republic of Cyprus, Tassos Papadopoulos, explained that he had given up his right to veto Turkish candidacy at the 2004 EU Summit, but that he still held sixty-two small vetoes on the opening and closing of each chapter of

35. The original Association Agreement in 1963 "clearly stated that Turkey was a European country, and foresaw . . . eventual [EU] membership." Michael Lake, *Introduction by the Editor to THE EU AND TURKEY, A GLITTERING PRIZE OR A MILLSTONE?*, *supra* note 17, at 10. Both the preamble and article 28 of the Agreement include language that refers to Turkey's accession upon satisfaction of Community obligations. Agreement Establishing an Association Between the European Economic Community and Turkey, 1977 O.J. (L 361) 1–2, 8. Subsequently, "the Helsinki European Council of December 1999 granted the official status of candidate country to Turkey. Accession negotiations were opened in October 2005." *Turkey 2008 Progress Report*, *supra* note 4.

36. Negotiations for accession began in October 2005 and are "guided by Turkey's progress in preparing for accession, which will be measured, *inter alia*, against the implementation of the Accession Partnership, as regularly revised." Council Decision 2008/157, 2008 O.J. (L 51) 4, 4 (EC); *see id.* at 4–18 (discussing the principles, priorities, and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC). This most recent Council Decision explains that the Accession Partnership obliges Turkey to satisfy the criteria defined by the Copenhagen European Council of 1993 ("Copenhagen Criteria") and other obligations of their "negotiating framework." *Id.* at 6. These include the full spectrum of law reforms to insure a stable democracy, public administration, judiciary, economy, civil society, as well as specific provisions relating to its external relations with Cyprus and other neighbors. *Id.* at 6–18.

37. Helsinki European Council, Presidency Conclusions, ¶ 12 (Dec. 10–11, 1999), *available at* http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/ACFA4C.htm.

38. Article 49 of the Treaty on European Union requires unanimity in the Council for accession of new Member States. Consolidated Version of the Treaty on European Union art. 49, 2008 O.J. (C 115) 13, 43.

39. Mark Beunderman, *Cyprus Blocks Opening of First Chapter in EU-Turkey Talks*, EUOBSERVER, June 9, 2006, <http://euobserver.com/9/21819>.

accession negotiations.⁴⁰ Cyprus, France, and other Member States have also blocked key negotiations.⁴¹ When viewed in the face of current developments, a reasonable observer must conclude that the twenty-seven Member States have little realistic hope of reaching the unanimity required to grant Turkey full membership in this era.⁴²

Recent events have dramatized this impasse. First, the June 2009 European Parliament elections, “in what is thought to be the biggest transnational vote in history,”⁴³ elevated many new explicitly anti-Turkey advocates to the EU legislature, strengthening national political parties that expressly vow to block Turkey’s accession⁴⁴ and moving the increasingly influential EU institution further to the right.⁴⁵ Second, France, the Republic of Cyprus, and the EU as a whole continue to veto the opening of various aspects of negotiations toward Turkey’s satisfaction of the *acquis*.⁴⁶ Third, the 2009 European Court of Justice’s decision in *Apostolides v. Orams*⁴⁷ and the election of a new nationalist government in the Turkish Republic of Northern Cyprus (“TRNC”) have further eroded hopes for a Cyprus settlement.

40. Hughes, *supra* note 6, at 79 & n.61. Trouble may also lie ahead in the European Commission as well: “This process will not be any easier for Turkey both because of the more stringent approach to ensuring implementation of the *acquis* and possibly also if some in the Commission bureaucracy continue to harbour doubts about the desirability of Turkish accession.” *Id.* at 86.

41. *See infra* Part III.

42. As more fully developed *infra*, the veto can and has been used to leverage accession issues of strong national interest. For example, Greece held the historic 2004 “Big Bang” enlargement hostage until the other EU Member State leaders agreed to include even a divided Cyprus. Now, the Greek Cypriot Republic of Cyprus holds Turkey hostage, blocking further negotiating chapters from being opened. “Greece [has] blocked all EU funds earmarked for Turkey for 20 years.” *THE EU AND TURKEY, A GLITTERING PRIZE OR A MILLSTONE?*, *supra* note 35, at 9.

43. *The European Elections, Country by Country*, WALL ST. J., June 8, 2009, <http://online.wsj.com/article/SB124444700376593655.html>.

44. “High on most far-right parties’ to-do lists, however, is keeping Turkey out of the EU. Roberto Cota, a senior Northern League official, said the party would be working ‘above all to block illegal immigration and the entry of Turkey into the Union.’” Vincent Boland et al., *Far Right Makes Inroads Based on Exploits Rising Insecurity*, FIN. TIMES (London), June 9, 2009, at 6.

45. Successive EU Treaties have entrusted increasing authority in the European Parliament. DAVID GALLOWAY, *THE TREATY OF NICE AND BEYOND: REALITIES AND ILLUSIONS OF POWER IN THE EU* 115, 126–27 (2001). And the pending Treaty of Lisbon will do more of the same, making Parliament “the equal of the Council in almost all EU legislation.” *Wanted: A Vigorous Debate*, ECONOMIST, June 6, 2009, at 49. The pending Treaty of Lisbon widens the European Parliament’s co-decision power (its legislative veto power) with the Council to thirty-three additional areas of legislative competence and increases its supervisory role in other areas as well. DAMIAN CHALMERS & GIORGIO MONTI, *EUROPEAN UNION LAW: TEXT AND MATERIALS: UPDATING SUPPLEMENT 10* (2008).

46. *See infra* notes 117–41 and accompanying text.

47. Case C-420/07, *Apostolides v. Orams*, (EC) 2009 WL 1117885 (Apr. 28, 2009), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0420:EN:HTML>.

Turkey's Prime Minister, Recep Tayyip Erdoğan, returned to Brussels in June 2009, as one Greek newsman put it, "trying to revive a European Union entry bid that is facing new signs of hostility from some member States. . . . [Yet] with membership talks almost at a standstill, . . . doubts [are raised] over whether Turkey's decades-old dream is attainable."⁴⁸ These events expose the reality that Turkey's potential accession poses controversial and complex issues that are unlikely to be resolved in the foreseeable future. Prudence suggests that the diverging sides recognize this reality and move forward. Much is to be gained by a productive relationship between Turkey and the EU. Discord in any form reaps the same negativity gains and opportunity losses. A period of cross-border catharsis must follow, leading to a positive recognition of the mutual benefits to be gained from closer and more open collaboration. Given all of this, the destructive pretense and drama over Turkey's possible full membership in the EU may end, and a new, more constructive dialogue may begin.

II. THE MORE CONSERVATIVE NEW EUROPEAN PARLIAMENT

The recent European Parliament elections widely publicized what many had softly spoken for some time: too many of Europe's citizens object to admitting Turkey into the EU. In the Parliamentary election campaigns of June 2009, rightist parties inhospitable to Turkey's EU aspirations won large numbers of seats,⁴⁹ increasing their dominance, while the "umbrella Socialist group . . . lost as many as a quarter of its seats."⁵⁰ Equally significant, the political rhetoric of too many successful,

48. Ibon Villeda, *Erdogan Faces EU Gauntlet*, KATHIMERINI, June 25, 2009, http://www.ekathimerini.com/4dcgi/_w_articles_world_2_25/06/2009_108367. "The success of some conservative parties opposed to Turkey in this month's European Parliament election, in which EU 'enlargement fatigue' and hostility to Ankara became a campaign issue in some countries, has dealt a blow to its hopes." *Id.*

49. The European Parliament reports that the center-right European People's Party ("EPP") won 264 seats, compared to 161 seats for the center-left. Results of the 2009 European Elections, http://www.europarl.europa.eu/parliament/archive/elections2009/en/index_en.html (last visited Oct. 3, 2009). Even more worrisome, the EPP's number does not include several ultra-right, reactionary new MEPs, many of whom advocate stridently against Turkey's accession. See *infra* notes 65–103 and accompanying text.

50. *Trouble at the Polls*, ECONOMIST, June 13, 2009, at 14, 15. The European Parliament news service reported the following full results of the Parliamentary elections:

- European People's Party (EPP)—265 seats
- Group of the Progressive Alliance of Socialists and Democrats (S&D)—184 seats
- Alliance of Liberals and Democrats (ALDE)—84 seats
- Group of the Greens/European Free Alliance (Greens/EFA)—55 seats

far-right candidates dangerously broadened the range of acceptable criticism of immigration, Turkey, and Islamic culture in general.⁵¹ Numerous fire-brands from “‘drawbridge parties’ that want to defend national boundaries against alien influences” won representation.⁵² In several Member States, including the United Kingdom, the Netherlands, Austria, Denmark, Slovakia, and Hungary, far-right and anti-immigrant parties were rewarded with seats in the Parliament.⁵³ At the same time, “governing center-right parties in Germany, France, Italy, and Belgium advanc[ed] along with center-right opposition groups in Britain and Spain.”⁵⁴ The center-left parties, considered more “‘Turkey friendly’ . . . had a humiliating defeat[.]”⁵⁵ In the middle of today’s widespread discontent over the economic crisis, conventional wisdom would expect voters to turn to Europe’s traditionally strong left.⁵⁶ Considering the results, factors such as hostility toward immigrants and other outsiders appear to have exerted more force.

In France, President Nicolas Sarkozy’s center-right *Union pour un Mouvement Populaire* (“UMP”) party pushed the anti-Turkish accession theme as to insist “that its leading candidates issue formal declarations promising not to let Turkey in.”⁵⁷ Sarkozy has remarked that Turkey does

European Conservatives and Reformists Group (ECR)—54 seats

Confederal Group of the European United Left—Nordic Green Left (GUE/NGL)—35 seats

Europe of Freedom and Democracy Group (EFD)—32 seats

Non-affiliated—27 seats

Seats by Political Group in Each Member State, http://www.europarl.europa.eu/parliamemnt/archive/elections2009/en/seats_by_group_en.html (last visited Oct. 4, 2009).

51. See Michael Steen, *Dutch Shift to Right Unsettles Mainstream Parties*, FIN. TIMES (London), June 5, 2009, at 8. “When we started saying those things they threatened to turn off our microphones in parliament. Now you hear Prime Minister Balkenende saying it.” *Id.*

52. *Swing Low, Swing Right*, ECONOMIST, June 11, 2009, at 53.

53. *Voters Steer Europe to the Right*, BBC NEWS, June 8, 2009, <http://news.bbc.co.uk/2/hi/europe/8088309.stm>.

54. Stephen Castle & Alan Cowell, *Center-Right Parties Gain in Europe*, N.Y. TIMES, June 9, 2009, <http://www.nytimes.com/2009/06/09/world/europe/09europe.html>.

55. *Anti-Turkey Sentiment Gaining Ground in European Parliament*, June 9, 2009, TODAY’S ZAHAN, <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=177522&bolum=102>. Some center-right parties oppose Turkey’s full membership in the EU and favor instead a form of special privileged partnership. “Turkey could find it increasingly hard to find ears willing to listen in Brussels.” *Id.*

56. “[T]he most striking feature of the elections was the failure of socialists or centre-left parties in four of Europe’s six largest countries . . . to persuade voters that the global financial crisis and recession represented a ‘crisis of capitalism’ that justified a turn to the left.” Tony Barber, *Europe’s Centre-Right Celebrates Resounding Victory*, FIN. TIMES, June 7, 2009, http://www.ft.com/cms/s/3beed410-5368-11de-be08-00144feabdc0,dwp_uuid=a0a64c2e-39.

57. Ben Hall, *Turkish Accession Adds Spark to French Election*, FIN. TIMES (London), May 23, 2009, at 3.

not have the “vocation” to join the EU, but rather should be granted a “privileged partnership” along with other countries such as Russia.⁵⁸ Sarkozy has flatly stated: “I do not believe Turkey has a place in the European Union.”⁵⁹ One UMP activist was quoted as saying: “Turkey is an issue that truly unites us.”⁶⁰ He joined with German Chancellor Angela Merkel in emphasizing “the need to define the borders of Europe (i.e., keep Turkey out).”⁶¹ Sarkozy’s party prospered at the polls, electing twenty-nine Members of the European Parliament (“MEPs”)⁶² and increasing its vote share by twelve percent over that in 2004.⁶³ Merkel’s party won even more with forty-two seats.⁶⁴

But news of fringe parties’ successes was even more dramatic. In the civilized, tolerant, EU-founding Member State of the Netherlands, “Dutch voters . . . delivered a solid bloc for anti-immigration politician Geert Wilders to take to Europe’s parliament.”⁶⁵ In its first time entering an EU election, “Dutch far-right and anti-Islamist . . . Party for Freedom came second with 17 percent of the vote, winning four seats in the assembly.”⁶⁶ Concerns for Muslim immigration and skepticism over Turkey’s aspiration to join the EU were reported as motivating issues.⁶⁷ Wilder’s “Party for Freedom” won four of the twenty-five Dutch seats with a platform “to reduce European Union influence, curb immigration and reject Turkey’s membership in the bloc.”⁶⁸ Also, among the Party for

58. *Id.*

59. Vincent Boland, George Parker & John Thornhill, *Paris Balks at Eurozone*, FIN. TIMES (London), June 26, 2007, at 7.

60. Ben Hall, *Enthusiasm Towards EU Sours into Cynicism*, FIN. TIMES (ASIA EDITION) (London), June 2, 2009, at 2.

61. Charlemagne, *The Endless Election Round*, ECONOMIST, June 13, 2009, at 58.

62. Results of the 2009 European Parliament Elections, *supra* note 49.

63. Stephen Castle et al., *Disaffection Dominates European Parliament Voting*, N.Y. TIMES, June 8, 2009, at A5.

64. European Election Results 2009 for Germany, http://www.europarl.europa.eu/parliament/archive/elections2009/en/germany_en.html (last visited Oct. 5, 2009). “The Christian Democratic Union and their Bavaria Christian Social Union sister party got 37.9 percent, according to results reported by Deutsche Presse-Agentur.” Brian Parkin, *Germany’s Merkel Wins EU Vote Seen as National Election Test*, BLOOMBERG, June 8, 2009, <http://www.bloomberg.com/apps/news?pid=20601100&sid=a9q6nqCPrXBI&refer=germany>. Subsequent general elections in September 2009 in Germany produced a further victory for Merkel and eliminated the center-left SPD from the grand coalition, thus strengthening anti-Turkish sentiment in the government. Tony Barber, *Berlin Set to Harden Stance on Turkey*, FIN. TIMES, Sept. 28, 2009, http://www.journalisted.com/article?id=1872355&sim_showall=yes (follow “Berlin set to harden stance on Turkey” hyperlink).

65. *Germany’s Dutch Hard-Right Party Scores Win in Europe Elections*, REUTERS, June 4, 2009, <http://www.reuters.com/article/worldNews/idUSTRE5536M020090604>.

66. *EU Election Marathon Enters Final Straight*, EU BUSINESS NEWS, June 7, 2009, <http://www.eubusiness.com/news-eu/1244339354.59/>.

67. *Id.*

68. Jurjen van de Pol, *Dutch Put Anti-Immigration Party in EU Parliament*, BLOOMBERG, June

Freedom's goals are banning the Koran and expelling Romania and Bulgaria from the EU.⁶⁹

Other successful parties in the Dutch election had campaigned in favor of the EU, suggesting that anti-immigration and anti-Turkey accession were key to the result.⁷⁰ That the xenophobic messages were gaining respectability, not to mention popularity, bodes poorly for the future discussion on Turkey's accession.⁷¹ For such a new and right-wing party to win seats in the European Parliament constitutes "a political earthquake."⁷²

Similarly, in the United Kingdom, the unbelievable "white-only British National Party" ("BNP")⁷³ won two seats in the European Parliament with a platform that included flatly reactionary positions. BNP leader Nick Griffin has made his Islamophobia unambiguous: "[W]e most definitely, and above all else, oppose [the EU's] expansion to bring in 80 million low-wage Muslims into Christian democratic Europe."⁷⁴ The BNP Constitution sets on paper its purpose and restricts its membership to protecting the

interests of the indigenous Anglo-Saxon, Celtic and Norse folk communities of Britain and those we regard as closely related and ethnically assimilated or assimilable aboriginal members of the European race also resident in Britain. Membership of the BNP is strictly defined within the terms of, and our members also self-define themselves within, the legal ambit of a defined 'racial group' this being 'Indigenous Caucasian' and defined 'ethnic groups' emanating from that Race as specified in law in the House of Lords case of *Mandla v. Dowell Lee* (1983) 1 ALL ER 1062, HL.⁷⁵

5, 2009, <http://www.bloomberg.com/apps/news?pid=20601087&sid=arwd8D.6rQpQ#>. "People are fed up with a large Europe as it is now and with Turkey possibly joining." *Id.* (quoting Geert Wilders).

69. *Swing Low, Swing Right*, *supra* note 52, at 17.

70. Steen, *supra* note 51.

71. Italian Prime Minister, Silvio Berlusconi, was quoted in June 2009: "When I walk down the streets of Milan and I see the large numbers of non-Italians, I feel like [I] am no longer an Italian or in a European city but in an African one." *Immigration Big Issue in EU Election in Italy*, EURONEWS, June 6, 2009, <http://www.euronews.net/2009/06/06/immigration-big-issue-in-eu-election-in-italy/>.

72. Steen, *supra* note 51.

73. Doug Saunders, *Angry Europe Embraces the Fringe*, GLOBE & MAIL (Canada), June 9, 2009, at A1. The BNP "forbids blacks from being members and calls for the 'voluntary' repatriation of anyone descended from immigrants." *Id.*

74. *BNP Makes Scottish Euro Poll Push*, BBC NEWS, May 28, 2009, http://news.bbc.co.uk/2/uk_news/politics/8043831.stm.

75. B.N.P. Const. 2009, § 2(1), available at <http://bnp.org.uk/Constitution%209th%20Ed%20Sep%202005.pdf>.

Griffin has written and uttered some frightening statements, reminiscent of 1930s fascism. For example in 1995, he attributed his party's electoral appeal to his constituents' perception that the BNP was "a strong, disciplined organisation with the ability to back up its slogan 'Defend the Rights for Whites' with well-directed boots and fists. When the crunch comes power is the product of force and will, not of rational debate."⁷⁶ Later in more commercially packaged remarks, he said:

"[W]e tried to simplify [the BNP's] message in some ways and to make it a saleable message. So it's not white supremacy or racial civil war or anything like that, which is what we know in fact is going on, and we're not supremacists, we're white survivalists, even that frightens people. Four apple pie words, freedom, security, identity and democracy."⁷⁷

After the June 2009 Parliamentary election, the party was challenged by the British government's Equality and Human Rights Commission for possibly having violated the UK's Race Relations Act with its constitution and membership criteria.⁷⁸

That radical political statements may be uttered is, of course, not the problem in a liberal democracy; that they be promoted—even financed with public funds—as a part of credible political debate and civil discourse is, however, troubling. With two seats in the European Parliament, the BNP "will receive much-needed financing and a higher profile as broadcasters feel obliged to invite its leaders to more television talk shows."⁷⁹ The far-right MEPs from various countries may have enough in their numbers now to form a separate political group recognized by European Parliament rules, giving them "access to significant funds and the right to chair or steer committees."⁸⁰ The potential validation of their views through media repetition and apparent political acceptance can threaten responsible civic discussion. The existing public hostility toward Turkey causes reluctance in politicians to advocate to the contrary, and timid political leadership on the issue "leaves the field wide open to the

76. BNP: Under the Skin, BBC News, http://news.bbc.co.uk/1/hi/english/static/in_depth/programmes/2001/bnp_special/the_leader/beliefs.stm (last visited Oct. 4, 2009).

77. *Id.* See also B.N.P Const. 2009.

78. Rosa Prince, *BNP Ordered to Accept Ethnic Minority Members or Face Prosecution*, TELEGRAPH, June 23, 2009, <http://www.telegraph.co.uk/news/newstopping/politics/5611876/BNP-ordered-to-accept-ethnic-minority-members-or-face-prosecution.html>.

79. Stephen Castle, *A Rightist Harnesses British Discontent*, N.Y. TIMES, June 10, 2009, at A6.

80. Posting of Hugo Brady to Centre for European Reform Blog, <http://centrefor-europeanreform.blogspot.com/2009/06/eu-politics-after-elections.html> (June 10, 2009, 12:36).

opponents of Turkish accession.”⁸¹ With France’s open opposition to Turkish accession and German Chancellor Angela Merkel’s preference for a privileged partnership, there is “no chance of [the EU] making a robust restatement of Europe’s commitment to Turkey’s membership.”⁸² When France vetoed opening negotiations on the *acquis* chapter addressing economic and monetary union, other EU leaders “shuffled their feet and talked nervously in response, but did nothing.”⁸³

As referenced above, more than one EU Member State continues to veto further accession negotiations for Turkey, slowing any momentum that had been generated in favor of Turkey’s admission. This retardation permits the political discussion to accelerate its descent to lower levels of racist and xenophobic attacks, as witnessed in the recent European Parliament campaigns. All combined, these events allow the anti-Turkey cause to gain respectability and support sufficient to dim prospects for the success of Turkey’s EU aspirations.

[I]f key political players continue to debate and challenge [Turkey’s accession], and act obstructively where they can, and if these debates are not resolved, this could become the most contested enlargement the EU has seen.

. . . .

If momentum slows or too many disagreements surface, then opponents of the process both in Turkey and in the EU, will be there ready to exploit the situation.⁸⁴

The Parliamentary election yielded similar xenophobic results in Austria, where another far-right Freedom Party scored well. “[T]he big winner was [Austria’s] rightist Freedom Party, which more than doubled its strength over the 2004 elections to 13.1 percent of the vote. It campaigned on an anti-Islam platform.”⁸⁵ A campaign poster for the Freedom Party proclaimed “‘Abendland in Christenhand’—or Europe in Christian hands—the implication being that the EU has allowed too many

81. BARYSCH, *supra* note 2, at 1.

82. Hughes, *supra* note 1, at 6.

83. *Id.*

84. Hughes, *supra* note 6, at 68, 84.

85. Constant Brand & Robert Wielaard, *Conservatives Score Wins in EU Parliament Voting*, HUFFINGTON POST, June 7, 2009, http://www.huffingtonpost.com/2009/06/07/eu-parliament-election-re_n_212354.html. See also TURKS IN EUROPE: CULTURE, IDENTITY AND INTEGRATION 124–27 (Talip Küçükcan & Veyis Güngör eds., 2009) (examples of FPÖ propaganda directed toward Turks).

Muslims to enter Europe,”⁸⁶ while a newspaper advertisement proclaimed the party’s vow to veto Turkish EU membership.⁸⁷ Andreas Moelzer, lead candidate for the Freedom Party, was reported recently as campaigning with the message: “[W]e are very strong opponents of Islam.”⁸⁸ The Freedom Party earned the votes to send two MEPs to the new European Parliament.⁸⁹

Austria has publicly called for Turkey to continue reforms and achieve a close partnership with the EU, perhaps “a tailor-made Turkey-European Union community,” but not full membership in the EU itself.⁹⁰ Austria has become a staunch proponent of the privileged partnership, while remaining the most opposed to accession of any EU Member State, due to fierce historical memories of the Turkish sieges combined with strong negative reactions to the sizeable Turkish immigrant minority in its communities.⁹¹ Many cite cultural differences to explain their opposition to the accession, complaining that Austria’s 200,000 Turkish immigrants have not integrated well.⁹²

Austria’s neighbor just down the Danube, Hungary, experienced a similar turn to the far-right, electing three of its twenty-two MEPs from the far-right Jobbik party, which “describes itself as Euro-skeptic and anti-immigration Critics say the party is racist and anti-Semitic.”⁹³ Jobbik, frighteningly, boasts a “civil defence” militia, called the Hungarian Guard.⁹⁴ Hungarian voters gave the center-right Fidesz-KDNP party and the Jobbik party 71% of the overall vote.⁹⁵ Announcements soon followed the election that the Jobbik party plans to “set up a new political bloc in co-operation with the BNP. The BNP confirmed this move, and said it was also exploring tie-ups with Jean-Marie Le Pen’s *Front Nationale* in

86. *Far-Right Party Throws Austria Politics into Turmoil Ahead of EU Elections*, DEUTSCHE WELLE, June 1, 2009, <http://www.dw-world.de/dw/article/0,,4295724,00.html>.

87. *Id.*

88. Jonny Dymond, *In Search of Europe: Austria*, BBC NEWS, May 30, 2009, <http://news.bbc.co.uk/2/hi/europe/8073207.stm>. Andreas Moelzer of the Freedom Party insists that their anti-Islam stance is not a religious concern, but a cultural one. *Id.*

89. European Election Results 2009 for Austria, http://www.europarl.europa.eu/parliament/archive/elections2009/en/austria_en.html (last visited Oct. 5, 2009).

90. *EU Plans New Accession Negotiations with Turkey at Critical Time*, DEUTSCHE WELLE, Apr. 21, 2006, <http://www.dw-world.de/dw/article/0,2144,3281206,00.html>. Sarkozy and Merkel likewise favor less than full membership for Turkey such as a “privileged partnership.” *Id.* at 3.

91. Grigoriadis, *supra* note 8, at 154, 159 n.39.

92. BARYSCH, *supra* note 2, at 4.

93. Brand & Wielaard, *supra* note 85.

94. *Swing Low, Swing Right*, *supra* note 52, at 53.

95. European Election Results 2009 for Hungary, http://www.europarl.europa.eu/parliament/archive/elections2009/en/hungary_en.html (last visited Oct. 5, 2009).

France, Austria's Freedom Party and Vlaams Belang of Flanders."⁹⁶ Such cross-nurturing can only strengthen these parties' notoriety and credibility.

In Slovakia, Hungary and Austria's neighbor to the north and east, "the far-right Slovak National Party won a seat for the first time."⁹⁷ In Finland, another anti-immigrant party, the True Finns, won a seat.⁹⁸ There, again, voters migrated from the center-left Social Democrats to the populist True Finns.⁹⁹

In Italy, "the Northern League, known for its anti-immigrant rhetoric, made gains with a projected 10 percent of the vote"¹⁰⁰ and won eight seats.¹⁰¹ Writing in *Corriere della Sera*, the political commentator Massimo Franco said the rise in support for the Northern League "legitimises a politics that is shared by xenophobic forces that are on the rise nearly everywhere, especially in Holland and Austria."¹⁰² As editorialists at *The Economist* observed, "Attacks on immigration and minorities slide too easily into xenophobia, racism and homophobia. Extremist parties across Europe must be resisted because they are a danger not just to the EU but to basic civil liberties."¹⁰³

In addition to this recent voter swing, a final Member State, the Republic of Cyprus, needs no elections to bolster its public opposition to Turkish accession. Seventy-two percent of Greek Cypriots polled in March 2009 opposed Turkish membership in the EU.¹⁰⁴

It is evident that the ensuing debate over Turkey's EU negotiations and ultimate accession is ratcheting to a more strident and xenophobic tone and substance. Turkey's advocates in the European Parliament face a formidable and seemingly unattainable task.

The frustrating disconnect between the EU leaders' public expressions of hope for Turkish accession and the reality of the public's discomfort with it may be explained by a recent commentator's observation:

96. Boland et al., *supra* note 44.

97. Judy Dempsey, *For East Europeans, E.U. Election Was a Big Yawn*, INT'L HERALD TRIB., June 10, 2009, at 2. See European Election Results 2009 for Slovakia, http://www.europarl.europa.eu/parliament/archive/elections2009/en/slovakia_en.html (last visited Oct. 5, 2009).

98. *Swing Low, Swing Right*, *supra* note 52, at 53. See also note 50 and accompanying text.

99. *True Finns and Greens Triumph in Finnish EU Vote*, HELSINKI TIMES, June 11, 2009, <http://www.helsinkitimes.fi/htimes/helsinki/our-location/156-our-location/6712-true-finns-and-greens-triumph-in-finnish-eu-vote.html>. "The True Finns' leader Timo Soini emerged the overwhelming victor in the Finnish EU vote, earning the support of more than 130,000 Finns." *Id.*

100. Castle et al., *supra* note 63, at A5.

101. Saunders, *supra* note 73, at A1.

102. Boland et al., *supra* note 44, at 6.

103. *Trouble at the Polls*, *supra* note 50, at 15.

104. *Greek Cypriots Oppose Full EU Membership for Turkey*, EU BUSINESS NEWS, Mar. 18, 2009, <http://www.eubusiness.com/news-eu/1237391222.85>.

Europe does not want to alienate Turkey, but it does not want the country to join the EU either. Old biases and prejudices still abound in Western Europe, and new ones have been added to the list. Political parties are becoming big, and will become even bigger in the years ahead, by being anti-immigrant, anti-Turk, and anti-Turkey. . . . When European citizens are asked whether they want Turkey to join the EU, a vast majority says ‘no.’ There is literally no chance whatsoever of them accepting Turkey as a full member of the EU.¹⁰⁵

At a May 2009 conference of European conservatives, both Merkel and Sarkozy again provoked Turkish Prime Minister Erdogan’s anger by asserting their preference for the “privileged partnership,” causing him to lash out:

“I read both of the leaders’ statements as unfortunate. I’m a person who believes in honesty in politics. I’m a person who believes that there is need for standing behind whatever is said during bilateral, tête-à-tête meetings.

. . . “The game has started, we’re playing and the penalty rules are changing during the match.’ It’s not acceptable; people will laugh at you.”¹⁰⁶

The Turkish press expressed widespread dismay at the statements, which had been made by the two EU leaders during a young CDU (Christian-Democrats) activists’ event. The *Daily Milliyet*, a Turkish newspaper, wrote that “Merkel has officially shocked Turkey.”¹⁰⁷ Subsequently, Erdogan said these negative attitudes have led to a “serious erosion in public enthusiasm and public consensus” for Turkey’s accession.¹⁰⁸ Erdogan directly condemned politicians using the anti-Turkey theme to gain populist support in the June parliamentary election, and he ruled out a “privileged partnership” because “it is impossible for us

105. Galien, *supra* note 13, at 11.

106. *Scholars Condemn Alternatives to Turkey’s EU Entry*, EURACTIV, May 20, 2009, <http://www.euractiv.com/en/enlargement/scholars-condemn-alternatives-turkey-eu-entry/article-182513>.

107. *Turkey Shocked by Franco-German Election Rhetoric*, EURACTIV, May 11, 2009, <http://www.euractiv.com/en/eu-elections/turkey-shocked-franco-german-election-rhetoric/article-182187> (citing DAILY MILLIYET).

108. *PM Erdogan Slams European Union over Turkey’s Accession Bid*, HÜRRIYET DAILY NEWS, June 22, 2009, <http://arama.hurriyet.com.tr/arsivnews.aspx?id=11918914>. Respected journalists had already reported the decline in 2007: “Ankara’s prospects of joining the EU have dwindled to the extent that they are seldom mentioned in Turkish political debate” Boland, Parker & Thornhill, *supra* note 59, at 7.

to accept a type of membership that does not exist in the EU *aquis*.”¹⁰⁹ At another 2009 conference with a different audience, several Turkish scholars insisted that the “privileged partnership” alternative would be impossible for Turkey and would provide little incentive for further government initiatives.¹¹⁰ Current Turkish Foreign Minister, Ahmet Davutoglu, agreed that any alternative to full membership would be unacceptable.¹¹¹

The opposition to Turkey’s accession, thus, can now be heard from the heads of state or government of several EU Member States, most notably of EU leaders Germany and France; it will be heard from a strengthened center-right-oriented European Parliament; and it will be heard even more loudly from the strident calls of far-right wing political leaders—all of which together causes a short circuit in the logic of the discussion or, in some cases, simply degrades it to a vitriolic potion of racism, xenophobia, Islamophobia, and the more narrow Turkophobia. The present political discussion is now pre-determined; more could be gained by redirecting the dialogue toward a productive end.

III. TOO MANY VETOES

[The negotiating process] sometimes seems hollow and adrift. The dry give-and-take in conference halls in Brussels masks bigger issues about Europe and diversity, Islam and democracy, and ties between modern and developing nations.

—Christopher Torchia & Robert Wielgaard, *EU and Turkey: Still Talking Membership, Barely*¹¹²

After agreeing unanimously in 2004 to open the accession negotiations with Turkey,¹¹³ Member States have used the negotiation veto, described above, in several settings and for diverse reasons to slow or stop the accession negotiation progress. Since the actual negotiations began in

109. Tony Barber, *Erdogan Hits Out at Efforts to Derail Turkey’s EU Entry*, FIN. TIMES, June 27, 2009, at 2.

110. *Scholars Condemn Alternatives to Turkey’s EU Entry*, *supra* note 106.

111. *Turkey Shocked by Franco-German Election Rhetoric*, *supra* note 107.

112. Christopher Torchia & Robert Wielgaard, *EU and Turkey: Still Talking Membership, Barely*, ABC NEWS, June 29, 2009, <http://abcnews.go.com/International/wireStory?id=7956144>.

113. On Friday, December 17, 2004, at its Brussels summit, the European Council agreed to open accession negotiations with Turkey, starting on October 3, 2005. ANTHONY COMFORT, DIRECTORATE-GENERAL EXTERNAL POLICIES, EUROPEAN PARLIAMENT POLICY DEPARTMENT, *TURKEY AND THE PROBLEM OF THE RECOGNITION OF CYPRUS*, 3 (2005), available at http://www.europarl.europa.eu/meetdocs/2004_2009/documents/nt/553/553930/553930en.pdf.

October 2005, Turkey was allowed to open talks on only eleven of the thirty-five chapters of the *acquis*,¹¹⁴ and a suspension has been imposed on officially concluding and closing any chapters at all.¹¹⁵ Because every Member State must approve the opening and closing of negotiations on each of the thirty-five chapters,¹¹⁶ the potential for obstruction is immense. The events unfolding in 2009 fortify the forces opposing Turkey and amplify their opportunity to make permanent the blockage of Turkey's accession.

Thus far, the negotiation veto history reveals the following. From the discussions on the first chapters of negotiations in June 2006, the government of the Greek Cypriot Republic of Cyprus has shown its willingness to halt the process if Turkey fails to accede to its demands.¹¹⁷ When Turkey and European Union officials attempted to open and routinely close the first and uncontroversial Chapter Twenty-five on Science and Research, which in fact contains little EU law on the subjects, Cyprus refused to conclude the narrow negotiations¹¹⁸ and demanded that the EU require Turkey to normalize relations with Cyprus and extend

114. On June 30, 2009, the eleventh chapter, which concerns taxation, was opened in Brussels. *Turkey Opens Taxation Chapter, Urges EU to Play the Game by Its Rules*, HÜRRIYET DAILY NEWS, June 30, 2009, <http://www.hurriyet.com.tr/english/world/11974579.asp?gid=244>. The eleven chapters include:

- Chapter 4—Free movement of capital,
- Chapter 6—Company law,
- Chapter 7—Intellectual property rights,
- Chapter 10—Information society and media,
- Chapter 16—Taxation,
- Chapter 18—Statistics,
- Chapter 20—Enterprise and industrial policy,
- Chapter 21—Trans-European networks,
- Chapter 28—Consumer and health protection, and
- Chapter 32—Financial control.

William Chislett, *Turkey's EU Accession Reaches an Impasse* 26 app. at 27 (Real Instituto Elcano, Working Paper No. 34/2009, 2009), available at http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/dt34-2009 (follow "Download PDF" hyperlink).

115. Press Release, 2770th Council Meeting, General Affairs (Turkey must fulfill commitments to the Protocol before chapters are provisionally closed.) (Dec. 11, 2006), available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/92122.pdf; Presidency Conclusions, Brussels European Council (Feb. 12, 2007) (endorsing the conclusions stated at the 2770th Council Meeting).

116. Beunderman, *supra* note 39.

117. Daniel Dombey, George Parker & Vincent Boland, *Cyprus Stance Threatens Turkish EU Talks*, FIN. TIMES, June 12, 2006, at 5.

118. *EU Entry for Turkey Faces a Test*, N.Y. TIMES, June 11, 2006, http://www.nytimes.com/2006/06/11/world/europe/11iht-cyprus.1947796.html?_r=1.

Customs Union treatment to it.¹¹⁹ As is illustrated below, this demand is not as simple as it may seem.

Just months later, in December 2006, the Republic of Cyprus again pushed the EU to block the negotiations further, asserting that European Commission recommendations were not strong enough against Turkey.¹²⁰ In the run up to the Council meeting regarding the issue, Cyprus “threatened to continue blocking all new negotiations” because the Commission proposal for a moderate sanction did not place enough pressure on Turkey.¹²¹ Days later, the EU General Affairs Council resisted exceeding the already powerful Commission recommendation, and it issued the formal decision to block the eight negotiation chapters related to the EU-Turkey customs union,¹²² and refused official closing of any chapter at all until Turkey extended customs union treatment to the Greek Cypriots.¹²³ Cyprus Government spokesperson, Christodoulos Pasiardis, declared just before the decision was taken that Cyprus would “continue and intensify its efforts in cooperation with the other member states so that the European Union’s final decisions [on Turkey’s continued negotiations]

119. *Id.*

120. *Cyprus Ready to Block Ankara EU Talks: Tassos Not Satisfied with Commission’s Stance Toward Turkey*, CYPRUS WEEKLY, Dec. 1, 2006, http://www.lobbyforcyprus.org/press/press2006/cywe_011206_readytoblock.htm. Cyprus, Austria, and Greece argued for a definite date to be set for Turkey to recognize Cyprus, but other countries pressed for moderation, as well as for sending some positive signals such as lifting the isolation of the TRNC. HR-Net, Cyprus PIO: Turkish Press and Other Media, 06-12-12, <http://www.hri.org/news/cyprus/tcpr/2006/06-12-12.tcpr.html#01> (last visited Aug. 3, 2009).

121. Paul Taylor, *Some EU States Seek Tougher Steps Against Turkey*, SUNDAY MAIL OF NICOSIA, Dec. 3, 2006, <http://www.lobbyforcyprus.org> (follow “Media Watch” hyperlink; then follow “2006” hyperlink; then follow “Some EU states seek tougher steps against Turkey” hyperlink). Greece, Portugal, and Germany also expressed concern that a date be set for Turkey’s compliance. *Id.*

122. “Cyprus is holding out on some, as is the European Commission, which supervises the accession process.” Amelie Bottollier-Depois, *Turkey Takes Tiny EU Membership Step*, EU BUSINESS NEWS, June 17, 2008, <http://www.eubusiness.com/news-eu/1213693321.78>.

123. CHALMERS & MONTI, *supra* note 45, at 16. The eight areas include:

- Chapter 1—Free Movement of Goods,
- Chapter 3—Right of Establishment and Freedom to Provide Services,
- 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.

Press Release, 2770th Council Meeting, *supra* note 115, at 9. As the Commission’s most recent Progress Report reveals, efforts toward satisfying the *acquis* continue in spite of the vetoes and refusal to open or close the chapters. See *Turkey 2008 Progress Report*, *supra* note 4, *passim*.

can be strict and effective.”¹²⁴ At that time, then French Presidential candidate, Nicolas Sarkozy, joined the Cypriot call to suspend the talks.¹²⁵

Subsequently in 2007, Sarkozy-led France, plainly on the record opposing Turkish accession, blocked the opening of an additional five chapters directly related to full accession.¹²⁶ When France vetoed opening the chapter on economic and monetary union, officials cited technical reasons, but it was clear to observers that France’s political opposition to Turkish EU membership was the underlying reason.¹²⁷ The other chapter negotiations that are proceeding “have done so at a snail’s pace.”¹²⁸ Pro-Turkey Sweden, which held the EU presidency from July 1 to December 31, 2009, feared that not a single new chapter will be opened in its term, enhancing “the specter of a standstill in [the] talks.”¹²⁹ Facing opposition from so many EU leaders and substantial political groups, Turkey’s path to accession is more difficult than ever. So the road to accession faces multiple Member State vetoes and delays from different directions.

The vetoes are particularly problematic because they arise out of two different, but equally intractable, conflicts. Cyprus and the EU are blocking the eight chapter negotiations for the stated, official reason of requiring Turkey to grant the Republic of Cyprus full customs union access to Turkey’s markets, ports, and airports, a patent obligation under the Turkey-EU Accession Agreement, and the special Additional Protocol requiring formal recognition of all Member States.¹³⁰ However, what would appear to be a clear obligation of accession actually is not simple at all, and the application of customs union recognition by Turkey presents a highly emotional and politically-charged diplomatic conundrum. Turkey resists granting the Republic of Cyprus full recognition until general agreement is reached to resolve the divided status of the island,¹³¹ or at least until the “crippling international embargo on the Turkish Cypriot state is lifted,”¹³² and “until the EU fulfill[s] a pledge to end the economic

124. *Cyprus Threatens to Veto Turkey Talks*, EURACTIV, June 1, 2007, <http://www.euractiv.com/en/enlargement/cyprus-threatens-veto-turkey-talks/article-160171#>.

125. *Id.*

126. Bottollier-Depois, *supra* note 122. France opposed opening chapters 11 (agriculture and rural affairs), 17 (economic and monetary policy), 22 (regional policy and coordination of structural funds), 33 (financial and budgetary provisions), and 34 (institutions). Chislett, *supra* note 114, at 28.

127. *Setback for Turkey as France Vetoes Economic Accession Talks*, EURO INTELLIGENCE, June 26, 2007, <http://www.eurointelligence.com/Article3.1018+M5cb5e73e916.0.html>.

128. CHALMERS & MONTI, *supra* note 45, at 16.

129. Villelabeitia, *supra* note 48.

130. Press Release, 2770th Council Meeting, *supra* note 115, at 8 (referring specifically to the Additional Protocol to the Association Agreement).

131. COMFORT, *supra* note 113, at 4.

132. *EU Entry for Turkey Faces a Test*, *supra* note 118. See also Dombey, Parker & Boland,

isolation of northern Cyprus, a move the internationally recognised Greek Cypriot government in Nicosia has blocked.”¹³³ Recognition of Cyprus might imply de-recognition of the TRNC, and Turkey insists that the present government of Cyprus does not represent the minority Turkish Cypriots.¹³⁴ Turkey is also reluctant to yield to what it perceived as Greek Cypriot deceitful double-dealing in 2004, which undermined efforts to resolve the island’s division.¹³⁵ Cyprus, for its part, has remained intransigent on this issue, partially trying to gain leverage in the ongoing reunification talks for the split island.¹³⁶ Despite the fact that Nicosia, the capital of Cyprus, has been a divided city longer than Berlin was,¹³⁷ recent events described herein make the island’s reunification less likely than in recent years, and Turkey seems unlikely to stand down in the face of the Greek Cypriot hard line.¹³⁸

France proffers an even more profound reason for its vetoes: because French President Nicolas Sarkozy “prefers a ‘privileged partnership,’ he argues that Turkey need not bother with those chapters of the *acquis* that are only relevant for full members.”¹³⁹ Sarkozy, as articulated *supra*, objects to Turkey’s fundamental lack of a European vocation, and he insists that Turkey simply does not belong in the EU.¹⁴⁰ In 2007, when France vetoed negotiations on the economic and monetary union chapter, Sarkozy stated unequivocally: “I do not believe Turkey has a place in the European Union.”¹⁴¹ This more abstract and philosophical objection appears even less likely to be resolved than the difficult Cyprus issue. With the remaining halted chapters essentially dependent on the Cyprus issue, the prospect for successful completion of the accession negotiation

supra note 117. Turkey refuses “to move on Greek Cypriot demands without a lifting of the economic and political isolation of the small Turkish community on the divided island.” *Id.*

133. Mark Tran, *EU-Minded Ankara Offers Concession on Cyprus*, GUARDIAN, Dec. 7, 2006, <http://www.guardian.co.uk/world/2006/dec/07/cyprus.turkey>. “Nicosia continues to oppose EU efforts to establish direct trade and economic links to the north of the island.” *Id.*

134. COMFORT, *supra* note 113.

135. See Seale, *supra* note 34.

136. Barysch, *supra* note 15.

137. *The Cyprus Stalemate: What Next?*, CENTER FOR EUR. POL’Y STUD., Dec. 2, 2006, http://old.ceps.eu/Article.php?article_id=524 (summary of presentation proceedings of Cyprus report by Dr. Nicholas Whyte, Europe Programme Director, Int’l Crisis Group).

138. Turkish Deputy Prime Minister Cemil Cicek “stressed that Turkey would not make any concessions on Cyprus in exchange for progress in its bid to join the European Union. ‘Turkey will never be dragged into a deadend of choosing between Cyprus and the EU.’” Odul Asik Ulker, *Return of Turkish Cypriot Nationalists Raises Peace Fears*, AGENCE FRANCE PRESSE, Apr. 20, 2009, 4/20/09 AGFRP 10:11:00 (Westlaw).

139. Barysch, *supra* note 15.

140. See *supra* notes 57–59 and accompanying text.

141. Boland, Parker & Thornhill, *supra* note 59, at 7.

degenerates. Moreover, Austria, a leading opponent of Turkey's accession is seen as hiding behind the Cyprus issue.¹⁴² The European Commission reported flatly in 2008 that Turkey had "made no progress towards fully implementing the Additional Protocol," and "no progress on normalising bilateral relations with the Republic of Cyprus."¹⁴³ With a new Commission review of Turkey's compliance with the Ankara Protocol due in December 2009, compliance with which is highly doubtful,¹⁴⁴ "[s]ome EU governments will insist that Turkey's accession process will be put on hold. Even if there were no such demands, there are now so many bilateral vetoes . . . that the EU would simply run out of chapters to negotiate with Ankara."¹⁴⁵

For many centuries, Cyprus's history has been filled with suffering and foreign exploitation.¹⁴⁶ But the tragic events of the post-colonial 1960s and 1970s on Cyprus provide the background that is fundamental to fathoming this current root-bound ethnic conflict.¹⁴⁷ The personal stories of the Greek and Turkish Cypriots during the island's violent break-up poignantly portray the degree of loss on both sides.¹⁴⁸ Turkey's resistance to extending formal diplomatic recognition to the Greek Cypriot government of Cyprus can be understood only in the light of two historic and highly controversial events in this era: first, the division of the island of Cyprus in the 1960s and 1970s (the outbreak of widespread sectarian violence on Cyprus, the Greek nationalist coup attempt, and the subsequent Turkish invasion of and refusal to leave the Turkish minority sector of the island), and second, thirty years later, the Greek Cypriot government's overwhelming opposition to and its constituents' rejection of the U.N.

142. The Chair of the European Parliament's EU-Turkey committee, Dutch MEP Joost Lagendijk, has stated that a few countries hide behind the Cyprus issue, such as France and Austria, and he fears that if the current negotiations fail, the island could be divided permanently. Interview by Yonca Poyraz Doğan with Joost Lagendijk, Chairman, Delegation to the EU-Turkey Joint Parliamentary Committee (Apr. 20, 2009), *transcript available at Lagendijk Says Some EU States Hiding Behind Cyprus*, TODAY'S ZAMAN, Apr. 20, 2009, <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=172917>.

143. *Turkey 2008 Progress Report*, *supra* note 4, at 28.

144. Compliance remains doubtful because of the deadlock between the three principal actors in the stalled Cyprus negotiations—the TRNC, the Republic of Cyprus, and Turkey. *See infra* Part III.B.

145. Barysch, *supra* note 15.

146. *See, e.g.*, SIR GEORGE HILL, A HISTORY OF CYPRUS (1949); H. D. PURCELL, CYPRUS (1968).

147. For a detailed historical account of this period, see CHRISTOPHER HITCHENS, HOSTAGE TO HISTORY: CYPRUS FROM THE OTTOMANS TO KISSINGER, *passim* (1997).

148. For a broad survey of the differences of opinion and poignancy of emotions following the violence and separations of the 1974 military split of the island, see ARI SITAS, DILEK LATIF & NATASA LOIZOU, PRIO CYPRUS CENTRE, REPORT: PROSPECTS OF RECONCILIATION, CO-EXISTENCE AND FORGIVENESS IN CYPRUS IN THE POST REFERENDUM PERIOD (2007), http://www.prio.no/files/manual-import/cyprus/1740_Report_4_07.pdf.

reunification plan in 2004, just days before the Republic of Cyprus's accession to the EU. Personal and political developments following these two dramatic periods in European history have carved deep scars of enmity and distrust, lasting for years, leading to today's inscrutable deadlock.

A. The 1963–1974 Breakdown of Cyprus

Most credible accounts of the island's division and of Turkish relations with Cyprus since its independence seem careful to adopt a balanced and accurate characterization of the fundamental background facts in an effort to be fair to all parties about the island's division. One U.K. judge, writing a judgment recently in the property case, *Apostolides v. Orams*, took explicit efforts to strive for objectivity:

The situation with which the court is concerned can only be understood in the context of the recent history of Cyprus. I shall set it out as briefly as I may and with the intention of avoiding controversy. The Republic of Cyprus came into being in 1960 when the United Kingdom gave up its sovereignty of the island The constitution of the Republic was intended to provide a balance between the Greek and Turkish communities on the island. Within three years the bi-communal government of the island had effectively failed. In March 1964 a United Nations peace keeping force, UNICYP, arrived. A Turkish Cypriot administration came into being in the area then under Turkish Cypriot control. In July 1974 there was a coup against the government of the [Republic of Cyprus's] President, Archbishop Makarios. The aim of the coup was to secure union with Greece. On 20 July 1974 the Turkish army invaded the north of the island and secured control of the area now under the administration of the Turkish Republic.¹⁴⁹

Typical journalistic commentary reports the same even-handed account, illustrated for example, in this BBC report: "Cyprus has been divided since 1974, when Turkish troops invaded to counter a Greek Cypriot coup backed by the military junta ruling Greece at the time."¹⁵⁰ Or

149. *Orams v. Apostolides*, [2006] EWHC (QB) 2226, [3] (Eng.) (Jack, J.).

150. *Cyprus "May Veto" EU-Turkey Talks*, BBC NEWS, Nov. 30, 2006, <http://news.bbc.co.uk/2/hi/europe/6160637.stm>. "Cyprus has been divided since 1974 when Turkish troops occupied its northern third in response to an Athens-engineered Greek Cypriot coup seeking to unite the island with Greece." *Cyprus Drops Legal Action Against EU Over Aid to North*, EU BUSINESS NEWS, June 3, 2008, <http://www.eubusiness.com/news-eu/1212509822.63>. The same view came from Agence France

perhaps a little more informative is this characterization by a news source focused more narrowly on EU affairs: “Cyprus gained independence from Britain in 1960. Three years later, inter-communal violence broke out between the Mediterranean island’s Greek and Turkish communities, which eventually led to a Greek-sponsored attempt in 1974 to seize the government and a military intervention by Turkey.”¹⁵¹

Most non-partisan academic characterization follows the same bipartisan pattern and offers more specifics.¹⁵² In 1963, after only three years as an independent country, the Republic of Cyprus was engulfed in general military conflict between the majority Greek Cypriots and the minority Turkish Cypriots.¹⁵³ For a while, anarchy prevailed as hundreds were killed on both sides.¹⁵⁴ Villages were destroyed, and thousands of people on both sides fled to safer enclaves in their traditional separate neighborhoods.¹⁵⁵ Atrocities sufficient to fuel generations of hatred were committed by both sides.¹⁵⁶ This period, thus, presented dangerous and explosive conflict, not simply minor disagreements of the finer niceties of constitutional governance. The British, Greek, and Turkish governments, which had overseen the launch of Cyprus’s independence, moved in peacekeeping troops, and the now famous “Green Line” was established to separate the sides.¹⁵⁷ The U.N. installed a peacekeeping mission in March the next year.¹⁵⁸

Through the following ten years, tensions continued, until in 1974, Greek military officers leading Cyprus National Guard soldiers staged a military coup to depose Cypriot President Archbishop Makarios and

Presse: “Cyprus has been divided since 1974 when Turkey invaded and seized its northern third in response to an Athens-engineered Greek Cypriot coup to unite the eastern Mediterranean island with Greece.” Ulker, *supra* note 138.

151. *Turkey Accession and Cyprus*, EURACTIV, Jan. 5, 2007, <http://www.euractiv.com/en/enlargement/turkey-accession-cyprus/article-135940>.

152. See, e.g., *infra* notes 155–57. Partisan writings on both sides, as would be expected, offer unbalanced fuel for their constituents. See, e.g., Cyprus Blog, <http://greekyriots.blogspot.com> (last visited Oct. 4, 2009); Real Facts about the Cyprus Problem, <http://www.solution2cyprus.info/?gclid=C0DA3OXdoJwCFQ UhnAod9REXdA> (last visited Oct. 4, 2009) (a pro-TRNC website).

153. Patrick R. Hugg, *Cyprus in Europe: Seizing the Momentum of Nice*, 34 VAND. J. TRANSNAT’L L. 1293, 1312 (2001).

154. *Id.* at 1313.

155. ANDREW BOROWIEC, *CYPRUS: A TROUBLED ISLAND* 57–58 (2000).

156. PURCELL, *supra* note 146, at 326–28.

157. Tomas Ehrlich, *Cyprus, the Warlike Isle: Origins and Elements of the Current Crisis*, 18 STAN. L. REV. 1021, 1044, 1078 (1966). The “Green Line” refers to the cease fire line that runs along where, in 1964, British troops laid down barbed wire to separate the Greek and Turkish Cypriots. Chislett, *supra* note 114, at 18.

158. S.C. Res. 186 (XIX), ¶ 4, U.N. Doc. S/RES/186 (Mar. 4, 1964) (Security Council Resolution on the Creation of the United Nations Peacekeeping Force in Cyprus, “UNFICYP”).

replace him with a leader dedicated to uniting the island with Greece, a concept known to the Greeks as *enosis*.¹⁵⁹ A U.S. diplomatic evaluation of the situation was that Turkey probably viewed the military coup as de facto *enosis* with Greece.¹⁶⁰ Crisis escalated, and Turkish leaders sought Britain's aid in protecting the independence of the island, but to little avail; poignant was British and American ambivalence, as a divided Cyprus was not unattractive to global strategy.¹⁶¹

Fearful that the Greek takeover would be accepted by the global powers, Turkey launched its now well-known and often condemned military invasion.¹⁶² "The U.S., in the lead at this point, expressed regret over the invasion, but publicly blamed Greece for the coup, as U.S. and British diplomats worked not to reverse the invasion, but to restrain the Greeks from going to war with Turkey."¹⁶³ Still in the 1970s Cold War, stabilizing the NATO alliance was the overarching concern.¹⁶⁴ In the next year, large-scale population exchanges between the north and south were completed under U.N. auspices, with two largely homogeneous ethnic zones established.¹⁶⁵

All accounts make clear that this explosive era of ethnic conflict in Cyprus delivered both personal tragedy and forcible dislocation for too many Greek and Turkish Cypriot people. History also makes clear that the

159. Michael N. Schmitt, *Aegean Angst: A Historical and Legal Analysis of the Greek-Turkish Dispute*, 2 ROGER WILLIAMS U. L. REV. 15, 23 (1996).

160. The new President, following the coup, could hardly have been a more inflammatory figure. Nicos Sampson was termed by the U.S. Ambassador as an "out and out gangster, a guerilla type with no compunctions against murder and assassination," and called a "Turk-eater" by others; he had been convicted of murder in 1957 and led forces against the Turkish Cypriots in the 1963–64 intercommunal violence. JAN ASMUSSEN, *CYPRUS AT WAR* 23 (2008).

161. BRENDAN O'MALLEY & IAN CRAIG, *THE CYPRUS CONSPIRACY* 223 (1999). Criticism of U.S. policy in the 1970s emphasized that President Richard Nixon was preoccupied with the Watergate crisis, and that Secretary of State Henry Kissinger supported the Greek military junta in power in Greece and its policy "designed to bring about such a crisis." HITCHENS, *supra* note 147, at 146–51. Greek colonels launched a campaign against Markarios in 1970, which turned violent and included assassination plots against Markarios and the creation of a terrorist underground to target Markarios and others in opposition. *Id.* at 70–71.

162. Suzanne Palmer, Note, *The Turkish Republic of Northern Cyprus: Should the United States Recognize It as an Independent State?*, 4 B.U. INT'L L.J. 423, 438 (1986). Many had expected Turkey to invade sooner when two previous coup attempts failed in 1970 and 1971. Olga Demetriou, *Catalysis, Catachresis: The EU's Impact on the Cyprus Conflict*, in *THE EUROPEAN UNION AND BORDER CONFLICTS: THE POWER OF INTEGRATION AND ASSOCIATION* 64, 69 (T. Diez, M. Albert & S. Stetter eds., 2008).

163. Hugg, *supra* note 153, at 1315.

164. STAFF OF S. COMM. ON THE JUDICIARY, 93RD CONG., *CRISIS ON CYPRUS: 1974: A STUDY MISSION REPORT PREPARED FOR THE USE OF THE SUBCOMMITTEE TO INVESTIGATE PROBLEMS CONNECTED WITH REFUGEES AND ESCAPEES* 44 (Comm. Print 1974).

165. David Wippman, *International Law and Ethnic Conflict in Cyprus*, 31 TEX INT'L L.J. 141, 171 (1996); S.C. Res. 370 (XXX), Annex, U.N. Doc. S/11789 (Aug. 5, 1975).

explosion was not an unprovoked, unilateral aggression of an expansionist conqueror from Asia Minor. Yet today this separation is portrayed by many as the result of only one event: the Turkish invasion. Myopically, the U.N. and EU discourse relating to the island's history primarily adopts this view and has condemned only Turkey and the TRNC for the island's division.¹⁶⁶ The facts belie that simplistic view and show its futility. As the Turkish Cypriot and the Turkish government today endeavor to reunite the island along U.N. recommendations and open it up for full customs union trade on both sides, this extreme, one-sided framing of the fundamental issue by the international community causes huge frustrations and natural defensive resistances.

Thirty-five years ago in 1974, the Greek government was directly culpable for engineering the military coup to overthrow the democratically elected President of Cyprus and to effect *enosis* with the Greek nation.¹⁶⁷ Subsequently that year, Turkey reacted to this government take-over by sending in troops to protect the Turkish Cypriots, as well as itself from then-hostile Greece annexing an island far closer to Turkey than to Greece. Thousands of people fled incoming soldiers on both sides, and population transfers took place.¹⁶⁸ Having no confidence that its Turkish Cypriot cousins were safe, Turkey refused to withdraw its troops. Without a U.N. plan to insure safety and fair treatment for Turkish Cypriots, Turkey has kept its troops in place to this day. Yet from 1974 on, Greece has succeeded in obtaining an international commercial embargo around northern Cyprus.¹⁶⁹ Subsequently in 1987 when Turkey responded to that embargo by closing its ports to Cypriot ships, the Greek Cypriots proclaimed a violation of international law.¹⁷⁰ Turkey has repeatedly

166. *See, e.g.*, G.A. Res. 3395 (XXX), U.N. Doc. A/RES/3395 (Nov. 20, 1975). There, the U.N. called for all States to respect the sovereignty, independence, and territorial integrity of Cyprus, demands the withdrawal of all foreign forces from the island, and calls for urgent measures to facilitate the return of displaced persons. *Id.* No mention is made of the coup attempt or the plight of minority Turkish Cypriots.

167. Numerous authoritative sources portray the details of the Greek colonels' subversion of the Makarios regime. *See, e.g.*, PARKER T. HART, TWO NATO ALLIES AT THE THRESHOLD OF WAR: CYPRUS, A FIRSTHAND ACCOUNT OF CRISIS MANAGEMENT, 1965–1968, at 129–30 (1990). Greece subsequently obstructed EU-Turkish relations immediately upon its entry into the European Economic Community in 1981, until it changed strategy eighteen years later at the Helsinki Summit in 1999. Grigoriadis, *supra* note 7, at 148. U.S. support for the Greek military junta during these years is likewise well documented. *See, e.g.*, HITCHENS, *supra* note 148, *passim*.

168. MICHAEL EMERSON, REDRAWING THE MAP OF EUROPE 72 (1998).

169. Grigoriadis, *supra* note 7, at 147.

170. Press and Information Office, Republic of Cyprus, Turkish Illegal Restrictive Measures Against Cyprus and European Union Shipping, <http://www.cyprus.gov.cy/moi/pio/pio.nsf/All/FE3A0CAC00592FC0C225725D002A8441> (last visited Oct. 5, 2009).

pledged that its ports would be opened as soon as the Cypriots open those in the TRNC.¹⁷¹ Stalemate results again.

The past burdens the future. The two sides of Cyprus view history through starkly different lenses:

Greek Cypriots generally think of the Cyprus problem as having started in July 1974. This, of course, is very different from the Turkish Cypriots' understanding of the problem, which they regard as having started in earnest in 1963 with the breakdown of the bicomunal ROC government. The Greek Cypriot side tends to overlook the conflict that existed between the two communities and the dire situation of the Turkish Cypriots before 1974, as well as the Greek/Greek Cypriot coup and *enosis* bid that preceded and precipitated the Turkish military operation. Ignoring all this, Greek Cypriots cast the problem as one of an arbitrary 'invasion and occupation by the Turkish forces of substantial territory of the Republic of Cyprus'.¹⁷²

This contentious cohabitation of Cyprus grew worse in the 2004 run-up to the divided island's admission to the EU in the midst of laborious U.N. efforts to reunite the island.

B. The 2004 United Nations Peace Plan Referendum

At the Helsinki Summit in 1999, the EU leaders agreed to admit the Republic of Cyprus into the EU in what would become the largest growth of the EU ever, as part of the historic 2004 central and eastern European enlargement.¹⁷³ In a critical and subsequently criticized decision at the Helsinki Summit, the EU leaders agreed to allow Cyprus's accession even without a resolution of the island's division: after welcoming the launch of the U.N. settlement talks on Cyprus, the European Council explained "that a political settlement will facilitate the accession of Cyprus to the European Union. [But] [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession

171. Yilmaz, *supra* note 20, at 21.

172. AYLÄ GÜREL & KUDRET ÖZERSAY, PRIO, THE POLITICS OF PROPERTY IN CYPRUS: CONFLICTING APPEALS TO 'BIZONALITY' AND 'HUMAN RIGHTS' BY THE TWO CYPRIOT COMMUNITIES 22 (2006), [http://www.prio.no/upload/Cyprus%20Property%20Report%202%20Trimmed%20\(corrected\).pdf](http://www.prio.no/upload/Cyprus%20Property%20Report%202%20Trimmed%20(corrected).pdf).

173. Helsinki European Council, *supra* note 37. The fifteen current Member States embrace thirteen candidate countries "for the stability and prosperity of the entire European continent." *Id.* ¶ 3.

will be made without the above being a precondition.”¹⁷⁴ Outside observers might ask why the EU would allow a militarily-divided state membership in the world’s flagship supranational model of harmony and peace, which “import[s] [a] fierce territorial dispute[] within the EU borders—a dispute in which the two sides are protected by separate security guarantees from Greece and Turkey.”¹⁷⁵

The answer is not a secret, and it returns to the fundamental flaw inherent in the unanimity requirement and the power of even a solitary veto. The EU, negotiating internally to achieve the mandated unanimity for agreement on the Treaty of Amsterdam and for the ongoing overall eastern enlargement process to continue to proceed forward, yielded to demands from Greece that the Republic of Cyprus be allowed into full membership, regardless of whether it was united.¹⁷⁶ Not surprisingly, following the EU announcement that the Republic of Cyprus would accede, even without a settlement of the division, Cyprus reunification negotiations degenerated.¹⁷⁷

For Turkey, the positive side of the Greek bargain with the EU was that Greece withheld its veto against the EU-Turkey Customs Union, in exchange for unquestioned EU entry for the Republic of Cyprus.¹⁷⁸ The Trojan Horse metaphor is simplistic and unfair, but clearly with the Greek Cypriot-governed Republic of Cyprus admitted as a full veto-bearing Member State in the EU, no Greek could have any doubt whatsoever of strong resistance to and heavy demands toward Turkey’s own subsequent admission to the club.

Nonetheless, following the agreement on the customs union and as Turkey was negotiating for an EU final decision agreeing to formally name Turkey as an EU accession candidate, the Turkish government worked in earnest at home toward the legal reforms needed to satisfy the requirements of both the customs union and the *acquis*. As European

174. *Id.* ¶9(b). See also Kerin Hope, *Dramatic Shift in Relations Between Old Enemies*, FIN. TIMES (London), Dec. 21, 1999, at 1. Part of the deal was also that any failure to reach a solution on Cyprus would not be caused by the Greek Cypriots. Demetriou, *supra* note 162, at 74.

175. HARUN ARIKAN, TURKEY AND THE EU: AN AWKWARD CANDIDATE FOR EU MEMBERSHIP? 191 (2d ed. 2006) (citing Neill Nugent, *EU Enlargement and the Cyprus Problem*, 38 J. COMMON MARKET STUD. 131, 139 (2000)). “The EU, after all, is meant to be the biggest peace project on earth. Sandbags and barbed wire are not what it is about.” Helena Smith, *Greeks Vote Down Cyprus Unity Plan*, GUARDIAN, Apr. 25, 2004, <http://www.guardian.co.uk/world/2004/apr/25/cyprus.united.nations> (quoting an EU diplomat based in Nicosia).

176. Heinz-Jürgen Axt, *The Island of Cyprus and the European Union*, in CYPRUS: THE NEED FOR NEW PERSPECTIVES 174, 176–77 (Clement Dodd et al. eds., 1999).

177. CELEMENT H. DODD, THE CYPRUS IMBROGLIO 102 (1998).

178. Axt, *supra* note 176, at 177.

Commission Progress Reports document, Turkey engaged in huge efforts in the late 1990s and early 2000s to satisfy the EU and, moreover, to promote the reunification of the island of Cyprus.¹⁷⁹ Herein lies the second major source of conflict for the Turks and Turkish-Cypriots toward the Republic of Cyprus. As a part of its accession efforts, Turkey also followed EU urgings to push the TRNC toward the U.N. peace process.¹⁸⁰ Accordingly, Turkey complied by adopting a major policy reversal toward the reunification of Cyprus.¹⁸¹ An EU warning, “in no uncertain terms . . . accounted for Ankara’s extraordinary volte-face in the hardline policy it ha[d] traditionally pursued over Cyprus.”¹⁸² When Turkey took the politically risky step to pressure the TRNC hard in favor of the U.N. sponsored reunification plan (the Annan Plan¹⁸³), the intended result from the perspective of Turkey and the EU was that this would situate the island so that it could accede to the EU as a united polity.¹⁸⁴ Greece had even lobbied the EU that starting Cyprus’s accession negotiations presented the EU’s only opportunity to promote the U.N.’s reunification efforts.¹⁸⁵ But then, to the dismay of EU and Turkish leaders, the government of the Republic of Cyprus, “which had long advocated reunification,”¹⁸⁶ reversed its role and launched a strong campaign opposed to the U.N. peace plan. In April 2004, the Greek Cypriot government campaigned fiercely against the U.N. sponsored Annan Plan to reunite the island, “unleashing an unprecedented wave of nationalism in the island.”¹⁸⁷ EU Enlargement Commissioner at the time Günter Verheugen assailed the change of position as duplicity, saying that “the government in the Greek part of Cyprus had cheated the EU by pretending to support the unification plan while in reality campaigning against it. Mr. Verheugen said the

179. *Turkey 2008 Progress Report*, *supra* note 4.

180. *See, e.g., 2003 Regular Report on Turkey’s Progress Towards Accession*, at 41 COM (2003).

181. Turkish Prime Minister “Erdogan won a lot of sympathy from the international community for overturning 30 years of policy and pressing the Turkish-Cypriots to endorse the reunification plan in a referendum, which they did with a 65% majority.” Chislett, *supra* note 114, at 17.

182. Smith, *supra* note 175.

183. Named after then U.N. Secretary General Kofi Annan. *The Comprehensive Settlement of the Cyprus Problem*, UNITED NATIONS, Mar. 31, 2004, <http://www.un.org/Depts/dpa/annanplan/annanplan.pdf>.

184. The central thesis was to use EU membership as a catalyst for Cyprus’s reunification. Demetriou, *supra* note 162, at 65.

185. *Id.* at 73.

186. *The Cyprus Stalemate*, *supra* note 137.

187. Neophytos Loizides & Eser Keskiner, *The Aftermath of the Annan Plan Referendums: Cross-Voting Moderation for Cyprus?*, 5 SOUTHEAST EUR. POL. 158, 159–60 (2004). Greek Cypriot President Papadopolous urged a “resounding ‘no’ to the plan” and went “so far as to brand ‘yes’ supporters as traitors” and “manipulat[ed] . . . state bureaucracy and media against the plan.” *Id.*

government ‘had taken him for a ride’ and he directly criticised the Greek Cypriot leader, Tasos Papadopoulos.¹⁸⁸ U.N. officials were furious that their worst fears had materialized.¹⁸⁹ The surprising rejection called into question the founding principle of the U.N. and EU reunification plan to adopt a federal solution based on equal treatment of the two communities.¹⁹⁰ Allowing Cyprus to accede to the EU—even without a solution to the island’s division—was based on the clear agreement that Cyprus would do all it could to unite the island, and Papadopoulos was to respect that part of the deal, said Verheugen.¹⁹¹ One scholar observed that Cyprus had ill-used the “EU’s institutional capacity for reconciliation and conflict resolution . . . to gain accession without compromising on a solution.”¹⁹² EU External Affairs Commissioner Chris Patten accused the Greek Cypriots of being “guilty of ‘betrayal,’ by using their support for reunification to leverage their way into the EU, only to reverse themselves when membership became imminent. ‘They are not going to be a popular addition to the family.’”¹⁹³ Naturally, the Turkish and Turkish Cypriot people reacted similarly, resenting mightily what they (and many other leaders) consider was the betrayal of the peace process by Cypriot bad faith.¹⁹⁴

The unsavory details of the Cypriot obstruction help explain the level current of resentment and frustration. The Greek Cypriot government was accused of “manipulating public opinion by restricting the news media and having school teachers push a ‘no’ vote to ensure the failure of . . . [the] referendum.”¹⁹⁵ EU and U.N. spokespersons were denied air time to discuss the plan.¹⁹⁶ “[M]anipulation of the state bureaucracy and media against the plan was documented in a 2004 report published by the Cyprus Action Network entitled ‘Human rights violations in Cyprus in the days

188. *Russia Vetoes Cyprus Resolution*, BBC NEWS, Apr. 22, 2004, <http://news.bbc.co.uk/2/hi/europe/3648339.stm>.

189. Smith, *supra* note 175.

190. *Russia Vetoes Cyprus Resolution*, *supra* note 188.

191. *Id.*

192. Demetriou, *supra* note 162, at 66.

193. Michael Young, *Isle of Spite, Cyprus Remains a Fractured Place*, SLATE, Apr. 26, 2004, <http://www.slate.com/id/2099482> (quoting Chris Patten, the EU’s external affairs commissioner).

194. Loizides & Keskiner, *supra* note 187. Many Turkish Cypriots were angry and felt “victimized by the Greek Cypriot vote, which prevented them from joining the EU.” *Id.* “[R]ancour engulf[ed] the island in 2004” after the rejection by the Greek Cypriots. *Bargaining Chips, Anyone?*, ECONOMIST, Sept. 6, 2008, at 68.

195. *U.S. Accuses Greek Cypriot Leaders of Derailing Unification Vote*, N.Y. TIMES, Apr. 27, 2004, at A9. At school, teachers provided students with “no” banners and T-shirts. *Id.*

196. *A Chance for Peace and Unity Wasted*, ECONOMIST, Apr. 27, 2004, at http://www.economist.com/agenda/displaystory.cfm?story_id=E1_NGNVGPV.

before the referendum.”¹⁹⁷ Dramatically, on the eve of the election, Greek Cypriot President Georgios Papadopoulos delivered “a tearful appeal on television for Greek Cypriots to turn down the UN reunification plan.”¹⁹⁸ In the waning days before the election, Britain sought a U.N. Security Council resolution to “encourage a ‘yes’ vote by strengthening the UN peacekeepers’ role in verifying all sides’ compliance with the plan,” in hopes of giving an assurance sought by one of the Greek Cypriot political parties, AKEL.¹⁹⁹ Seemingly not a player in the dispute, Russia unexpectedly cast its first Security Council veto in ten years, blocking the resolution, and the next day, the AKEL party called for defeat of the plan.²⁰⁰ The Greek Cypriot government, with its Foreign Minister paying an unannounced visit to Moscow just before the vote, is understood to have appealed to Russia for the veto of the U.N. resolution.²⁰¹ Russia and Cyprus share their Orthodox religion²⁰² and the Greek Cypriot Orthodox Bishop had “condemned the plan and urged voters to reject it at the referendum.”²⁰³

The Greek Cypriot voters overwhelmingly voted against the reconciliation plan (three-to-one against), while the Turkish Cypriot voters endorsed the plan by a substantial margin (two-to-one in favor).²⁰⁴ In May 2004, just days after the vote, the Greek Cypriot government was admitted as a full EU Member State,²⁰⁵ armed with its own new accession veto and vested interests to protect. “Perversely, the result means that only the rejectionist Greek Cypriot part of the island [would] join the European Union.”²⁰⁶

197. Loizides & Keskiner, *supra* note 187, at 160 (footnote omitted).

198. Charlie Charalambous, *Papadopoulos: Nationalist Who Snubbed Cyprus Unity Plan*, AGENCE FRANCE PRESSE, Dec. 12, 2008, 12/12/08 AGFRP 11:32:00 (Westlaw).

199. *A Chance for Peace and Unity Wasted*, *supra* note 196. The Greek communist party, named, in English, the Progressive Party for the Working People and abbreviated in Greek as AKEL, had requested the assurance. *Id.* See Progressive Party for the Working People, http://www.akel.org.cy/nqcontent.cfm?a_id=1&tt=graphic&lang=13 (last visited Oct. 5, 2009).

200. *A Chance for Peace and Unity Wasted*, *supra* note 196.

201. Andreas Hadjipapas & Kerin Hope, *Greek Cypriots Set to Vote “No” in Referendum on Cyprus Unification*, FIN. TIMES (London), Apr. 23, 2004, at 8.

202. *A Chance for Peace and Unity Wasted*, *supra* note 196. AKEL is a Communist political party, and Cyprus has also retained good relations over the years with Moscow. Hadjipapas & Hope, *supra* note 201, at 8.

203. Kerin Hope, *Annan Urges Acceptance of Cyprus Referendums Reunification Talks*, FIN. TIMES (London), Apr. 1, 2004, at 7.

204. John Katsigeorgis, *Cyprus Post-referendum*, UN CHRONICLE ONLINE EDITION, http://www.un.org/Pubs/chronicle/2004/webArticles/073004_Cyprus.asp# (last visited Oct. 5, 2009).

205. *A Chance for Peace and Unity Wasted*, *supra* note 196.

206. *Id.* Apparently, Greek Cypriot policy changed in 2003, based on the strategy that Greek Cypriot demands could be “better served within the framework of Cypriot membership of the EU before a solution had been finalised.” Demetriou, *supra* note 162, at 87. One Greek Cypriot politician

This was a huge blow to the international community, since the UN, the EU and Turkey had put a considerable effort into winning support for the plan. . . . Erdogan, who took a big domestic political risk by pressing for a ‘yes’ vote, described the accession of the divided island as a ‘big mistake’²⁰⁷

This view is now shared by other EU countries.²⁰⁸ The EU jeopardized all of the progress toward Turkey’s accession “by its irresponsible attitude to Cyprus,” giving Cyprus a guarantee of EU entry before the reunification vote.²⁰⁹ “While Ankara cajoled Turkish Cypriots to vote for the peace deal, the Greek Cypriots self-indulgently voted against—and now obstruct Turkey from within the EU.”²¹⁰

The obstruction of the island’s reunification also became an obstruction to Turkey’s other major policy goal, EU accession for itself. The timing of the Cypriot vote refusal could not have been worse for Turkey’s negotiation of its own accession agreement with the EU. The Cyprus peace referendum was held on April 24, 2004. The Greek Cypriot Republic of Cyprus, entered the EU alone on May 1, 2004, without the Turkish Cypriots. The reunification pursued by so many had been condemned by the aggressive, negative efforts of the Greek Cypriots. The Turks were even more distrustful about the Greek Cypriot deceit, which left north Cyprus out in the cold, as its own EU accession negotiations were progressing toward final agreement.

Turkey and the EU struggled in their negotiations, but ultimately succeeded in agreeing to the terms that Turkey would satisfy the Copenhagen political criteria,²¹¹ as all candidates must, and furthermore that Turkey would sign an amendment or protocol to the 1963 EEC-Turkey Association Agreement (the original “Ankara Agreement”) incorporating all the Member States into that relationship and also into the 1995 EU-Turkey Customs Union.²¹² Turkey ratified that Protocol in July 2005.²¹³ But the Cypriot political drama by then had presented a difficult and complex situation.

stated: “We have actually denied Europe the ability to project the Union as a conflict-solving project.” *Id.* at 93.

207. Chislett, *supra* note 114, at 17.

208. *Id.*

209. *Turkey and EU Held Hostage by Cyprus*, FIN. TIMES (London), Dec. 1, 2006, at 16.

210. *Id.*

211. *Turkey Accession and Cyprus*, *supra* note 151.

212. *Id.*

213. *Id.*

Against this background of Turkish and Turkish-Cypriot support for the Annan Plan,²¹⁴ and the overpowering refusal of the Greek Cypriots to do the same, Turkey's government understandably had difficulties rewarding the Republic of Cyprus with formal diplomatic recognition for the first time so soon after it had so forcefully sabotaged the reunification vote.²¹⁵

That was difficult for [Erdogan] to do, because last April the Greek Cypriots rejected a plan for the reunification of the island put forward by [then] UN Secretary General Kofi Annan. At that time, Erdogan exerted great efforts to persuade the Turkish Cypriots to vote in favour of the Annan Plan—which they did—but the Greek Cypriots sabotaged the deal. To reward them now with Turkish recognition was, therefore, politically impossible. Turkish public opinion would not have accepted it.²¹⁶

Accordingly, in July 2005, when Turkey signed the Protocol incorporating the new 2004 Member States into the EU-Turkey Association Agreement and Customs Union, it “issued a declaration saying that its signature did not mean its recognition of the Republic of Cyprus.”²¹⁷ This unilateral denial of Cypriot recognition was “aimed squarely at countering nationalist claims [in Turkey] that Turkey ha[d] sold out the Turkish Cypriots as part of its bid for EU membership.”²¹⁸ This diplomatic assertion was rebuffed by the EU in its own Declaration of 21 September 2005 in which the Community and Member States flatly demanded that Turkey formally recognize all Member States (i.e. the Republic of Cyprus), and remove all barriers to the free movement of goods among all Member States, including means of transport, and the failure to do so will affect the progress of Turkey's accession negotiations.²¹⁹

214. The Annan Plan adjusts the Greek-Cypriot and Turkish-Cypriot portions of the island. *Bargaining Chips, Anyone?*, *supra* note 194, at 68. Greek Cypriot rejection of the Annan Plan allowed a divided Cyprus to enter the EU, “leaving the Turkish Cypriots out in the cold despite pledges by the pan-European bloc to end the isolation of the TRNC.” Ulker, *supra* note 138.

215. *A Date with Turkey*, *ECONOMIST*, Dec. 17, 2004, http://www.economist.com/agenda/display_story.cfm?story_id=E1_PVDNQN. They also “feared a nationalist backlash at home.” *Id.*

216. Seale, *supra* note 34.

217. *Turkey Accession and Cyprus*, *supra* note 151.

218. Kerin Hope & Vincent Boland, *UN-Backed Peace Plan Still on Hold*, *FIN. TIMES* (London), Aug. 3, 2005, at 1.

219. Press Release, Council of the European Union, Declaration by the European Community and Its Member States (Sept. 21, 2005), available at <http://www.auswaertiges-amt.de/diplo/en/Europa/Erweiterung/TuerkeiErklaerung.pdf>.

Attempting to agree on the specific terms for the coming October 3, 2005 negotiations generated another crisis: Austria argued for mention of the “privileged partnership” in the negotiations and wanted to omit language referring to “accession” as the shared objective of the process.²²⁰ Austria also insisted that Turkey withdraw its declaration of non-recognition of Cyprus, and extend Customs Union treatment to Cyprus; it only withdrew its objections on the day of the proposed start, October 3, in return for an agreement to begin Croatia’s accession negotiations.²²¹ Around midnight on the evening of October 3, 2005, after a “bitter struggle over the terms,” the Negotiating Framework Protocol was signed. However, the terms included different requirements and more rigorous scrutiny than for previous accession candidates, including unequivocal terms requiring Turkey to support reunification efforts in Cyprus and fulfill its obligations under the Additional Protocol, specifically pertaining to the customs union, with close monitoring by the EU.²²² One politician in Turkey at this time reacted prophetically: “The EU is constantly imposing double standards on Turkey. Even if they say yes on October 3, the talks will never end.”²²³

The Commission’s next report observed that Turkey had made no progress in extending recognition towards Cyprus, and as explained above, the Member States wrestled with how to pressure Turkey into compliance. In December 2006, the EU Council suspended negotiations on eight chapters of the *acquis* relevant to the Republic of Cyprus, and agreed to refrain from closing any further chapters until Turkey complied with the Association Agreement requirements vis-à-vis Cyprus.²²⁴

Thus, the Republic of Cyprus has effectively executed its strategy to dominate the relationship with Turkey and the Turkish Cypriots. Since the beginning of Turkey’s accession negotiations, the Republic of Cyprus continually obstructed the process. “The Greek-Cypriots have been

220. Grigoriadis, *supra* note 7, at 154–55.

221. *Id.* Perhaps Austria’s government was stiffening its position on Turkey might allow a subsequent compromise to unblock accession negotiations for Croatia. *Id.*

222. Craig S. Smith, *European Union Formally Opens Talks on Turkey’s Joining*, N.Y. TIMES, Oct. 4, 2005, at A1. See Atila Eralp, *Turkey and the European Union in 2005*, MEDITERRANEAN YEARBOOK, 2006, at 141 (2006) (suggesting that terms were different and more rigorous than for other candidates). The terms of the agreement are set forth plainly in the document itself. See Negotiating Framework, http://ec.europa.eu/enlargement/pdf/st20002_05_TR_framedoc_en.pdf (last visited Oct. 5, 2009).

223. Graham Bowley, *A Standoff Threatens EU-Turkey Negotiation*, N.Y. TIMES, Sept. 29, 2005, <http://www.nytimes.com/2005/09/29/business/worldbusiness/29iht-eu.html> (quoting Umit Ozdag, leader of Turkey’s MHP party).

224. Press Release, 2770th Council Meeting, *supra* note 115, at 2, 9.

subverting Turkey's EU membership ever since" the divided country was allowed to join the EU without a settlement of the island's division.²²⁵ Even opening negotiations on the first, innocuous chapter of the *acquis* relating to Science and Technology was vetoed (even though it contains no real law and was intended to be closed the same day it was opened), and Cyprus threatened to block further negotiations if its demands were not met.²²⁶ Subsequently, Cyprus labored in late 2006 to impose the strongest possible measures against Turkey, further blocking negotiations.²²⁷ More recently, in June 2009, Cyprus promised to continue its block of negotiations on the energy chapter due to Turkey's interference with its gas exploration off coastal waters.²²⁸ Cypriot leaders have issued much rhetoric of fairness to Turkey, but their actions have consistently halted Turkey's progress in the negotiations. Cypriot Foreign Minister, Markos Kyprianou, announced in May 2009 that his government had no immediate plans to veto Turkey's ultimate accession, but that it would "reflect" on whether to permit the opening of new chapters for negotiation.²²⁹

Not only has the Greek Cypriot government vetoed Turkey's negotiating progress in addition to sabotaging the Annan Plan for reunifying Cyprus, but it has also subsequently punished the northern part of the island by blocking EU efforts to reduce the isolation of the TRNC community. The Greek Cypriots blocked EU funds to and disallowed direct trade with the poorer northern community, thus continuing the community's isolation and increasing the Greek Cypriot leverage over them.²³⁰ In April 2004, just before the vote on the Annan Plan, the EU

225. *A Hawkish Problem*, *ECONOMIST*, Apr. 25, 2009, at 57.

226. Beunderman, *supra* note 39.

227. *Supra* notes 117–23 and accompanying text.

228. *Cyprus and Turkey Clash Over Oil Exploration*, *EURACTIV*, June 11, 2009, <http://www.euractiv.com/en/enlargement/cyprus-turkey-clash-oil-exploration/article-183085?Ref=RSS>. Turkey and the Greek Cypriot government are "at odds over the Greek Cypriots' oil exploration works in the Mediterranean. Greek Cypriots have accused Turkey of harassing research vessels on four occasions since Nov. 13 in areas it has earmarked for future oil and gas exploration. Turkey has said the ships were on its continental shelf." Irem Koker, *Greek Cypriots May Block More Chapters in Turkey's EU Negotiations*, *HÜRRİYET DAILY NEWS*, <http://www.hurriyet.com.tr/english/world/10570510.asp> (last visited Mar. 22, 2010).

229. *Cyprus Rules Out Veto of Turkey's EU Accession*, *SETIMES.COM*, May 18, 2009, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2009/.

230.

"The European Union is held hostage by the Greek Cypriots," Mr Talat says, referring to the manoeuvring by Greek Cypriot diplomats in Brussels that has blocked the transfer of Euros 259m in EU aid to the Turkish Cypriots. The Greek Cypriots have also blocked direct access to EU markets for Turkish Cypriot exporters, who send goods via Turkish ports because the republic in the north is recognised only by Turkey.

Council announced that it 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.”²³¹ From 2004 onward, Greek Cypriot President Papadopoulos blocked EU attempts to reward the northern Cypriots for their support of the reunification plan with financial aid and direct trade links.²³² In February 2006, the EU approved Council Regulation 389/2006 in an effort to end the northern sector’s isolation, promote the island’s reunification through economic integration, and improve contact between the two communities and with the EU by establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community.²³³ The Regulation specifies development of, inter alia, infrastructure for energy, transport, the environment, telecommunications, and water supply; confident building measures; support to civil society; promotion of people-to-people contacts; and assistance in preparation for the implementation of the *acquis*.²³⁴ The EU specifically explained that the purpose of the €259 million in aid to the Turkish Cypriot community was to “ease the breakaway state’s isolation, after a divided Cyprus joined the EU in 2004 when Greek Cypriots rejected [the] UN reunification plan.”²³⁵ By mid-July 2008, only 20% of the €259 million allotted funds had been authorized by the Council for expenditure.²³⁶

According to Professor Neophytos Loizides, “many Turkish Cypriots [felt] victimized by the Greek Cypriot vote, which prevented them from joining the EU. They also regard the international community as having been too slow to support them financially and politically.”²³⁷ Further,

Hope & Boland, *supra* note 218. “The EU then rubbed salt in the wounds by renegeing on its promise to open direct trade with Turkish Cypriots.” Chislett, *supra* note 114, at 17.

231. *Communication from the Commission to the European Parliament and the Council, Second Annual Report 2007 on the Implementation of Community Assistance* at 1, COM (2008) 551 final (quoting Council Regulation 389/2006, 2006 O.J. (L 65) 5 (EC)).

232. Quentin Peel, *How Cyprus’s Wounds Are Hurting Europe*, FIN. TIMES (London), Dec. 23, 2004, at 21.

233. Council Regulation 389/2006, pmbl. ¶2, art. 1, 2006 O.J. (L 65) 5 (establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community).

234. *Id.*

235. *Cyprus Drops Legal Action Against EU over Aid to North*, *supra* note 150.

236. European Commission Enlargement, Turkish Cypriot Community, http://ec.europa.eu/enlargement/turkish_cypriot_community/index_en.htm (last visited Oct. 5, 2009) (citing Council Regulation 389/2006, 2006 O.J. (L 65)).

237. Loizides & Keskiner, *supra* note 187, at 160.

The first four years of Cypriot membership amount to a failure for the EU's enlargement policy. . . . Turkish-Cypriots were promised access to all the familiar instruments of European soft power. Direct trade with the EU was to be encouraged, and €259m was to be spent on things like scholarships, waterworks and projects to foster links between the two Cypriot communities. But progress has foundered on Turkish-Cypriot demands for direct trade and Greek-Cypriot blocking of any project that implies recognition of authorities in the Turkish north.²³⁸

“The Greek Cypriots have shown few qualms in Brussels about extending their disputes with the Turkish Cypriots to broader issues of EU policy,” such as, threatening to veto an EU action plan for the Caucasus, unless Azerbaijan gave up its plans to permit flights from Azerbaijan into the TRNC.²³⁹

In Brussels, Cypriot diplomats' obstruction of EU projects designed to end the isolation of the north caused anger among EU leaders, many of whom say Cyprus should never have been admitted as a divided island. In truth, the EU had no choice, again, because of the accession veto—in the run-up to the huge 2004 enlargement, Greece made it clear that it would not approve any new expansion of the EU unless it included Cyprus.²⁴⁰

The Turkish Foreign Minister, Ahmet Davutoğlu, recently argued that because none of the promises to the Turkish Cypriots made by the EU and the U.N. have been kept, efforts to pressure Turkey to open ports and airports to Cyprus are not in good faith.²⁴¹ Commentators agree:

While demanding Ankara admit Cyprus ships and goods, Brussels has not delivered on its pledge to end the isolation of Turkish Cyprus. The Cyprus issue can be resolved if Member States are prepared to put the strategic interests of the Union above the narrow interests of the Nicosia government. On present form, however, the EU is now widely seen to have retreated behind a wall of dissembling waffle and to be acting in bad faith.²⁴²

238. *No Love Lost*, ECONOMIST, May 31, 2008, Special Report at 8, 8. “Turkish Cypriots and the government in Ankara continue to feel let down by the Greek Cypriot rejection in the 2004 referendum” Chislett, *supra* note 114, at 17.

239. Hope & Boland, *supra* note 218.

240. *No Love Lost*, *supra* note 238, Special Report at 8.

241. Davutoğlu, *EU's Cyprus Pressure Not in Good Faith*, TODAY'S ZAMAN, May 22, 2009, at 4.

242. *Turkey and EU Held Hostage by Cyprus*, *supra* note 209.

“What is clear is that the EU complicated matters hugely by letting a divided Cyprus join. ‘Had [the EU] been less rigid and cleverer, it would have lifted the sanctions long ago and thereby minimised the dependence of northern Cyprus on Ankara.’”²⁴³ Many diplomats and politicians in Brussels argue that Cyprus was allowed in the EU too soon; once a candidate country becomes member, the EU loses much of its leverage.²⁴⁴ For example, after Cyprus’s accession, Papodopoulos lengthened the list of objections to the Annan Plan and “resisted UN pleas to ease the process of restarting talks by setting out the Greek Cypriots’ priorities for changes in the peace plan.”²⁴⁵ In 2007, the Greek Cypriots were seen as “stalling any deal to reunite their island, search[ing] for any means to take their specific dispute with Turkey into the wider EU negotiations.”²⁴⁶

Because Cyprus’s membership in the EU now makes the likelihood of a settlement on the island unlikely, thus the accession of a divided Cyprus before unifying the island stands openly as a “serious foreign policy failure in itself and for Europe’s future relations with Turkey.”²⁴⁷ Since the beginning, “EU member countries had long been aware that Cyprus was a potential dealbreaker—the EU enlargement commissioner, Olli Rehn, likened the Cyprus issue to a ‘train wreck’ waiting to happen.”²⁴⁸ In response, one commentator added: “Irrespective of whether it is any longer realistic to believe Turkey will one day join the EU, that would be a geopolitically catastrophic train wreck.”²⁴⁹

C. *International Inequity?*

The Republic of Cyprus and the “international community” have consistently maintained that the division of Cyprus is illegal and that the Greek Cypriot government is the only legitimate government of the island.²⁵⁰ The U.N.’s Annan Plan advocated a bi-zonal agreement granting the Turkish Cypriots a protective measure of autonomy and power-sharing, but the Greek Cypriots have rejected that. U.N. resolutions twenty-five years ago provided that the legal basis for the TRNC’s and Turkey’s condemnation rested on contemporary international power

243. *A Hawkish Problem*, *supra* note 225, at 57 (quoting commentator Yavuz Baydar).

244. Charlemagne, *Bulgarian Rhapsody*, *ECONOMIST*, May 16, 2009, at 60.

245. Hope & Boland, *supra* note 218.

246. Hughes, *supra* note 1.

247. *Id.*

248. *EU Entry for Turkey Faces a Test*, *supra* note 118.

249. *Turkey and EU Held Hostage by Cyprus*, *supra* note 209, at 16.

250. *See supra* note 166 and accompanying text; *infra* note 253.

structures, accomplishing little but to punish the poorer Turkish Cypriots.²⁵¹ These resolutions have been ineffective: the Greek Cypriots have not achieved their goal of establishing a Hellenistic unitary state on the island. Such a result will not occur under the U.N.-sponsored peace plan that offers bi-zonal authority. The Greek Cypriots seem less interested in that power-sharing reunification than with using their EU membership card to force the Turks and Turkish Cypriots into a subordinate position. Past performances suggest that the Turkish and Turkish Cypriot leaders will not yield the highly valued, protective principle of a bi-zonal and bi-communal state. So breakthrough appears unlikely. Turkish Prime Minister Erdogan has stated the obvious: “Everything is reciprocal. No one can expect anything from us. If we don’t see a positive signal coming, no one should expect a positive gesture from us. . . .”²⁵²

The inequity is that Turkey and the isolated Turkish Cypriots are held solely at fault and therefore hostage to the anachronistic U.N. resolutions dating back to 1974²⁵³ and an ill-advised EU decision in 2004 to allow Cyprus to accede to full membership before cooperating with the U.N. One side alone should not be called to judgment for this tragedy; history discloses sufficient culpability on both sides. In recent years, the international community has not shown a common or consistent position regarding the recognition of separating states, as has been and is currently illustrated by disparate treatment in the countries of the former Yugoslavia, the break-away of countries of the former Soviet Union, and others.²⁵⁴ With and without the consent of their former superior

251. See S.C. Res. 349 (XXIX), U.N. Doc. S/RES/349 (May 29, 1974); S.C. Res. 353 (XXIX), U.N. Doc. S/RES/353 (July 20, 1974); S.C. Res. 354 (XXIX), U.N. Doc. S/RES/354 (July 23, 1974); S.C. Res. 355 (XXIX), U.N. Doc. S/RES/355 (Aug. 1, 1974); S.C. Res. 357 (XXIX), U.N. Doc. S/RES/357 (Aug. 14, 1974); S.C. Res. 358 (XXIX), U.N. Doc. S/RES/358 (Aug. 15, 1974); S.C. Res. 359 (XXIX), U.N. Doc. S/RES/359 (Aug. 15, 1974); S.C. Res. 360 (XXIX), U.N. Doc. S/RES/360 (Aug. 16, 1974); S.C. Res. 361 (XXIX), U.N. Doc. S/RES/361 (Aug. 30, 1974); S.C. Res. 364 (XXIX), U.N. Doc. S/RES/364 (Dec. 13, 1974); S.C. Res. 365 (XXIX), U.N. Doc. S/RES/365 (Dec. 13, 1974).

252. Tony Barber, *Turkish Prime Minister Hits EU’s “Narrow Minded” Politicians*, FIN. TIMES, June 26, 2009, http://www.ft.com/cms/s/442c9312-6248-11de-b1c9-00144feabdc0,dwp_uuid=70662e7c.

253. See, e.g., S.C. Res. 353, *supra* note 251 (calling for immediate cessation of fighting, respect for the sovereignty and territorial integrity of the Republic of Cyprus and call for the removal of all foreign troops from the island); S.C. Res. 354, *supra* note 251 (same); S.C. Res. 355, *supra* note 251 (same); S.C. Res. 357, *supra* note 251 (same); S.C. Res. 358, *supra* note 251 (same); S.C. Res. 359, *supra* note 251 (same); S.C. Res. 360, *supra* note 251 (same); S.C. Res. 361, *supra* note 251 (same); G.A. Res. 3212 (XXIX), U.N. Doc. A/Res/3212 (Nov. 1, 1974) (same).

254. See Marietta S. König, *The Effects of the Kosovo Status Negotiations on the Relationship Between Russia and the EU and on the De Facto States in the Post-Soviet Space*, OSCE YEARBOOK

governments, scores of new governments have proclaimed independence, and many have achieved U.N. or other international recognition.²⁵⁵ “International lawyers need not be reminded of the revolutionary and unclear character of self-determination . . . The discourse of national self-determination contains little that is self-evident on which everyone can agree. Disagreements reflect political priorities and partisan positions.”²⁵⁶ International law offers no clear and simple formula for resolving conflicts over separatist claims, as opposing principles promote contrary interests and results.²⁵⁷ International law can generate anomalies,²⁵⁸ and the Turkish government has not been tolerant of this one. So, the international community faces a standoff. Greece blocked Turkey and reconciliation for years, and now Cyprus does the same. All sides are at fault. It is time for a solution.

The only way to resolve this problem if for all sides to moderate their approaches, which previously have

been primarily informed by [each] side’s very different experience of the island’s recent traumatic past, and has therefore been one-sided and categorical. To achieve a compromise, what seems to be most needed is a fresh, more flexible and forward-looking reconsideration by both sides on how to understand these two basic principles [bi-zonality and fundamental rights].²⁵⁹

And they need to begin the reconciliation soon before the situation worsens. The International Crisis Group warns that, should the Greek and Turkish Cypriots fail to reach an agreement on reunification before the April 2010 elections in the TRNC, pro-compromise president Talat will

2007, at 37.

255. From the well-known new states emerging from the former Yugoslavia, Soviet Union, Abkhazia, South Ossetia, countries of the South Caucasus, Tibet, Taiwan, and to the conflicts over Kosovo’s independence, the complexities resist clear categorization. *Id.*

256. Marti Koskeniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, 43 INT’L & COMP. L.Q. 241, 244 (1994).

257. Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 YALE J. INT’L L. 177, 177–78 (1991). See also Cass R. Sunstein, *Constitutionalism and Secession*, 58 U. CHI. L. REV. 633 (1991).

258. For discussion of the inconsistencies and inadequacies of international law as it recognizes the legitimacy of states, often reflecting political expedience, subjectivity, see Hugg, *supra* note 153, at 1343–45. The international community’s response to claims of territorial integrity has been “ambiguous and inconstant.” Steven Tratner, *Drawing a Better Line: Uti Possidetis and the Borders of New States*, 90 AM. J. INT’L L. 590, 590 (1996).

259. GÜREL & ÖZERSAY, *supra* note 172, at 34.

likely be replaced by a candidate much less willing to cooperate, leaving partition of the island as the only option on the table.²⁶⁰

IV. THE EUROPEAN COURT OF JUSTICE DECISION AND THE TRNC ELECTIONS

Two additional events in 2009 have interposed further obstacles to Turkey's advance toward the European Union, both arising from the broad stand-off regarding the Republic of Cyprus, the TRNC, and negotiations for the island's re-unification.²⁶¹ A judicial decision by the European Court of Justice in Luxembourg ("ECJ") and the 2009 parliamentary election in the TRNC complicate matters further and lessen the prospects for Turkey's accession.

A. *The Apostolides Decision*

One of the principal issues in Cypriot reunification negotiations is, of course, how to resolve property rights following the island's military division in 1974 and the widespread "agreed transfer of populations."²⁶² In April 2009, the European Court of Justice issued a far-reaching decision, *Apostolides v. Orams*,²⁶³ directly addressing the property rights of Cypriots in both the north and south who lost their homes after the 1974 division of the island, as well as subsequent holders of property that had previously been occupied and owned by the displaced residents.²⁶⁴

"The property issue is perhaps the most complex and contentious aspect of the Cyprus problem, owing to numerous and diverse legal, economic, and social complexities. Most important, however, is the political significance the two sides attach to it."²⁶⁵ The property issue affects so many people in so many ways: first, it directly implicates the

260. Delphine Strauss, *ICG warns of Possible Cyprus Partition*, FIN. TIMES, Sept. 30, 2009, <http://www.ft.com/cms/s/0/f46ba790-ad2a-11de-9caf-00144feabdc0.html>. "A permanent split . . . would mean lower economic growth, higher defense spending and reduced international credibility for both sides[.]" *Id.*

261. Delphine Strauss, *Time Running Out for Federal Cyprus Solution*, FIN. TIMES, May 12, 2009, <http://www.ft.com/cms/s/0/5fd1221a-3e8d-11de-9a6c-00144feabdc0.html> (citing the TRNC parliamentary elections and the Apostolides judgment as "two new threats to hopes of a federal solution to Cyprus's division").

262. Amelie Bottollier-Depois, *EU Court Backs Return of Northern Cyprus Property*, AGENCE FRANCE PRESSE, Apr. 28, 2009, 4/28/09 AGFRP 11:43:00 (Westlaw).

263. Case C-420/07, *Apostolides v. Orams*, (EC) 2009 WL 1117885 (Apr. 28, 2009), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0420:EN:HTML>.

264. Strauss, *supra* note 261.

265. GÜREL & ÖZERSAY, *supra* note 172, at vii.

“individual rights and interests of a large part of the populations on both sides of the island (that is, almost half of the population in the north and about one-third in the south)”;²⁶⁶ second, it will impact the economic, social, and geopolitical makeup of the island if the island is reunified, as is hoped by most.²⁶⁷ TRNC authorities estimate that, pre-1974, 63.8% of property in its jurisdiction was owned by Greek Cypriots, while Greek Cypriot authorities set the figure at 78.5%.²⁶⁸ Conversely in the south, Turkish Cypriot numbers assert that its people owned 22% of property in the south, while Greek Cypriot estimates are at 13.9%.²⁶⁹ Displaced persons following the 1974 split include some 142,000 Greek Cypriots from north to south, and 45,000 Turkish Cypriots from south to north, totaling a migration of nearly 30% of the island’s population.²⁷⁰

Further aggravating the problem,

the passage of several decades without a political solution has complicated the property issue further, turning it into an immense technical and legal conundrum. With time, the number of individuals involved continues to multiply, as properties are transferred or change hands through inheritance or sale, or are transformed through development.²⁷¹

The *Apostolides* decision could also “have far-ranging ramifications for the fast-growing Cyprus second home market . . . [with] 22,000 foreign investors involved in property in northern Cyprus,”²⁷² leading to “thousands of claims against foreign buyers by Greek Cypriots eager for

266. Kudret Özersay & Ayla Gürel, *Property and Human Rights in Cyprus: The European Court of Human Rights as a Platform of Political Struggle*, 44 MIDDLE E. STUD. 291, 291 (2008). This article analyzes four European Court of Human Rights decisions regarding property rights in Cyprus and the political and legal arguments presented by the opposing sides. See also Ayla Gürel, *Property, Bizonality, and Reunification*, REVMA, http://www.cyprus-mail.com/news/main.php?id=45713&cat_id=4 (last visited Oct. 5, 2009). The controversy “became spectacularly more complex after the 1974 de facto division of the island. Division left nearly one third of the Greek Cypriot community and about half of the Turkish Cypriot community displaced, thus resulting in a huge problem of rights with respect to lost homes and properties.” Dr. Gürel is a researcher at the neutral Peace Research Centre, which attempts to promote peaceful resolution of the Cypriot separation. See Research and Dialogue for an Informed Public Debate in Cyprus, PRIO Cyprus Centre, <http://www.prio.no/Cyprus> (last visited Oct. 5, 2009).

267. Özersay & Gürel, *supra* note 266.

268. GÜREL & ÖZERSAY, *supra* note 172, at 9.

269. *Id.* at vii.

270. *Id.* at 3–4.

271. *Id.* at 1–2.

272. Kevin Brass, *Ruling Clouds Cyprus Second Home Market*, <http://raisingtheroof.blogs.nytimes.com/2009/04/29/ruling-clouds-cyprus-second-home-ma> (Apr. 29, 2009, 13:38).

the return of land taken during the Turkish invasion of the north.”²⁷³ The *Telegraph*, a U.K. newspaper, “estimates that there are approximately 4,000 British citizen property owners in northern Cyprus” that may be subject to litigation.²⁷⁴

Hence, settling the property issue affects many people on and off the island, implicating not only actual property and economic issues, but also deeply-held social and political beliefs. As is illustrated plainly by the facts and holdings of the case, the ECJ’s decision stands as a strong affirmation of the Republic of Cyprus’s claim to legitimacy over the entire island and as a threatening invitation for the many Greek Cypriots with property claims in Cyprus to resolve them through private litigation, rather than through the present ongoing U.N. negotiations.

B. The Apostolides Facts—A Perfect Storm?

The *Apostolides* case reached the top court in Europe, the ECJ, by referral from the national court directly adjudicating the matter, pursuant to EC Treaty Article 234.²⁷⁵ The U.K. court requesting the Article 234 reference was the England and Wales Court of Appeal (Civil Division), which had jurisdiction to hear the *Apostolides* enforcement action on appeal from the original U.K. judge in the High Court. Mr. Justice Jack of the U.K. High Court set forth the facts in more detail than the ECJ, and therefore his recitation offers the source herein, unless otherwise noted.²⁷⁶

Apostolides v. Orams presents the classic conflict following sectarian violence causing “population exchanges.”²⁷⁷ Claimant, Meletis Apostolides, and his family were forced to leave their house in the

273. *Id.*

274. *Id.*

275. Article 234 of the Treaty Establishing the European Community (EC Treaty) enables and sometimes requires Member State tribunals to refer unsettled issues of Community law that arise in their proceedings to the European Court of Justice. The Member State proceeding is then held in abeyance until the ECJ issues and sends its ruling back to the original tribunal for application to the facts and final determination of the proceeding. *Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Communities* (EC), 29 Dec. 2006, art. 234, 2006 O.J. (C 321) E1. See generally WYATT & DASHWOOD’S EUROPEAN UNION LAW 501 (5th ed. 2006).

276. *Orams v. Apostolides*, [2006] EWHC (Q.B.) 2226. The ECJ’s recitation of the facts is typically terse, and the referring U.K. court explains the facts in more helpful detail. The facts in this paragraph are taken from these pages of the case itself.

277. Following the violent division of the island in 1974 and 1975, the opposing sides signed a euphemistically entitled “Population Exchange Agreement,” permitting the safe transfer of remaining Greek Cypriots and Turkish Cypriots out of hostile territory and into their respective parts of the island. The Secretary-General, *Interim Report of the Secretary-General Pursuant to Security Council Resolution 370 (1975)*, Annex ¶¶ 1–5, delivered to the Security Council, U.N. Doc. S/11789 (Aug. 5, 1975).

northern Cypriot district of Kyrenia in 1974, as a result of the military division of the island, described above, that sent tens of thousands of Greek and Turkish Cypriots fleeing for safety. For the forty-five years thereafter, the Apostolides family has resided in the Greek Cypriot southern part of Cyprus. Control of the land “abandoned” by those fleeing in both parts of the island was assumed by the respective governments and either sold or otherwise assigned for new use. In 2002, Respondents David and Linda Orams, who are British citizens residing in Sussex, United Kingdom, purchased a part of the land in question for £50,000 and spent some further £160,000 building a villa and other improvements on the land. They bought the land from its legally registered Turkish Cypriot owner in accord with Turkish Cypriot real property law. The Orams were told that this Turkish Cypriot owner had given up property in southern Cyprus in the 1974 violence.

When a crossover checkpoint was opened and transit first became possible between north and south Cyprus in 2003, Apostolides traveled over to visit the property. The next year, relying on the family’s original title to the land, he sued the Orams in the District Court of Nicosia, the capital of the Republic of Cyprus, seeking orders from the Greek Cypriot court to command that the Orams demolish their villa, hand over possession of the property to him, and pay monetary damages. The same day, formal service of the suit was performed on Mrs. Orams, requiring her and her husband to plead a response within ten days. The service documents were printed in Greek, which the Orams could not read. Thirteen days later, Apostolides applied for default judgments on all claims, as no appearance had been filed for the Orams. The following day, the district court granted the default judgments, awarding Apostolides possession of the land and all other relief sought, including substantial damages, monthly rent until the property is handed over, and interest at eight percent. Subsequently, that same day, a lawyer for the Orams sought to enter their formal appearance in the proceeding, but the default judgments had already been entered.

The next week, the Orams filed a motion in the same district court to set aside the default judgments. Four days later, the court denied the motion in a thirty-six page judgment, justifying the court’s jurisdiction and citing a decision of the European Court of Human Rights that held that ownership remained in the original Greek Cypriot owner’s hands, and rejecting arguments based on the good faith purchase by the Orams, local custom, and the irrelevancy of EU Regulation No. 44/2001 regarding recognition of judgments in the courts of other Member States.

Subsequently, in 2005, Apostolides applied in a U.K. court to have the Greek Cypriot judgments registered and declared enforceable in the United Kingdom, pursuant to EC Regulation 44/2001 on the enforcement of judgments of other Member States.²⁷⁸ The registration and enforcement proceeding, pursuant to that EC Regulation, allows no submissions by the party against whom enforcement is sought, and the presiding Master ordered the judgments registered and declared enforceable. Mr. Orams appealed that ruling, as the EC regulation allows, and the appellate High Court overturned the lower court's order. Apostolides appealed that reversal to the U.K. Court of Appeal, which then stayed the proceeding and referred legal issues to the ECJ.

C. The Legal Appeals in the UK and the European Court of Justice

In his High Court judgment of September 6, 2006, which refused to order enforcement of the Greek Cypriot judgments, the presiding Mr. Justice Jack addressed five issues he discerned in the appeal. First, he considered the issues arising from the situation of the land. Mr. Justice Jack observed that European Community law, the *acquis*, had been suspended in the areas "in which the Government of the Republic of Cyprus does not exercise effective control,"²⁷⁹ e.g., the territory of the TRNC, by Protocol 10 of the Treaty of Accession by which the Republic of Cyprus became a Member State. He evaluated arguments for and against application of the *acquis* in the TRNC, concluding:

I fully recognise the difficulty of the problem. I have concluded, however, that the correct analysis is that the effect of [Protocol 10] is that the *acquis*, and therefore Regulation 44/2001, are of no effect in relation to matters which relate to the area controlled by the TRNC, and that this prevents Mr Apostolides relying on it to seek to enforce the judgments which he has obtained [T]he conflict . . . such as the present between the de facto situation in northern Cyprus and its system of law, and the enforcement of judgments such as the present against the new 'owners' of Greek Cypriot property, who have assets elsewhere in the European Union is

278. *Apostolides v. Orams*, (EC) 2009 WL 1117885, ¶ 29 (Apr. 28, 2009).

279. *Orams v. Apostolides*, [2006] EWHC (Q.B.) 2226, [15] (citing Treaty Concerning the Accession of the Czech Republic, The Republic of Estonia, The Republic of Cyprus, The Republic of Latvia, The Republic of Lithuania, The Republic of Hungary, The Republic of Malta, The Republic of Poland, The Republic of Slovenia, and The Slovak Republic to the European Union, Sept. 23, 2003, 2003 O.J. (L 236), Protocol No 10, art. 1).

an international problem ill-suited to be resolved by private litigation. The cases which I have cited in the European Court of Human Rights show that compensation can be obtained at a higher level of litigation, with the State of Turkey as the defendant. They show also the development through the influence of that court of a scheme to provide compensation. These practical considerations support the conclusion that Protocol 10 is to be given the effect I have found that it should have.²⁸⁰

Further, Mr. Justice Jack reasoned that the Orams were given insufficient time to respond to the initial summons. Relying on EC Regulation 44/2001, Article 34.2, which provides that a default judgment shall not be recognized if the service documents initiating the proceeding were not served “in sufficient time and in such a way as to enable [a respondent] to arrange for his defense,”²⁸¹ he concluded that the judgments in question should not be recognized. Dismissing additional objections and arguments from both sides, Mr. Justice Jack ruled the appeal to be allowed.

Apostolides appealed to the U.K. Court of Appeal, and in June 2007, that appellate court stayed the proceeding and referred legal issues arising from the case to the European Court of Justice.²⁸² The European Court of Justice received the referral in September 2007 and rendered its grand chamber judgment on April 28, 2009.²⁸³

The ECJ held that Protocol 10 of the Accession Treaty must be read restrictively, as a derogation from that Treaty and “limited to what is absolutely necessary” to achieve the objectives of the Treaty.²⁸⁴ Accordingly, the Court concluded that Protocol 10 could not be interpreted to preclude application of Regulation No. 44/2001, which requires the recognition of judgments of other Member State courts.²⁸⁵ The Court reasoned that Protocol 10’s derogation does not preclude application of the EC Regulation to judgments of a Cypriot court. Protocol 10’s suspension applies only to the application of the *acquis* in the northern area of Cyprus, but the judgments involved in this case were given by a court in the

280. *Orams*, [2006] EWHC (Q.B.) 2226, [30].

281. Council Regulation 44/2001, art. 34, ¶ 2, 2001 O.J. (L 12) (EC).

282. Case C-420/07, *Apostolides*, ¶ 31. See also James Lumley, Britons Cyprus Holiday Home Dispute Sent to EU’s Highest Court, BLOOMBERG, <http://www.bloomberg.com/apps/news?pid=20601102&sid=aKOIg8EzEqAo&refer=uk>.

283. Case C-420/07, *Apostolides*; see *id.* ¶ 82 (ruling of the Court).

284. *Id.*

285. *Id.*

government-controlled Republic of Cyprus. The land's location in the northern area changes nothing because first, location does not nullify the obligation by the court to apply the EC Regulation in the southern part, and second, the Regulation does not necessarily have to be applied in that northern part.²⁸⁶

Next, the ECJ concluded that the case did concern “civil and commercial matters” so as to qualify under the applicable terms of Regulation No 44/2001.²⁸⁷ The Court further ruled that the Cypriot district court below had proper jurisdiction pursuant to the Regulation over the land in the northern area because that land “is situated in the territory of the Republic of Cyprus.”²⁸⁸ In response to the referral issue of whether the practical unenforceability of the judgments in the northern area constituted grounds for a refusal to apply the Regulation under its Article 34(1) exception for matters contrary to the public policy of the Member State in which enforcement is sought, the Court rejected that argument, insisting that matters of public policy sufficient to warrant such an exception to the Regulation must amount to a “manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order.”²⁸⁹ Because the court below raised no such fundamental principle in the U.K. legal order, the exception did not apply. The Court added that anticipated difficulties in enforcing the judgment do not deprive the judgments of their enforceability pursuant to Article 38(1) of the Regulation—they have been legally declared as enforceable by the proper court, as that subsection of the Regulation requires.²⁹⁰

Finally, the ECJ addressed the Regulation's provision for refusing recognition of judgments when defendants have not been given sufficient time in which to arrange their defense and challenge the proceeding in the original court. The Court explained that the record below in this case showed that the Orams did raise that challenge in the Greek Cypriot court on November 9, 2004, at their lawyer's first appearance, and thus inadequate time was not an issue.²⁹¹

286. *Id.*

287. Council Directive 2001/44/EC, art. 34(2), 2001 O.J. (L 175) 17–20.

288. Case C-420/07, *Apostolides*, ¶ 51.

289. *Id.* ¶ 59.

290. *Id.* ¶ 70.

291. *Id.* ¶ 78.

D. *The Significance of the ECJ's Ruling*

The *Apostolides* judgment represents a complex interpretation of numerous legal rules and jurisdictional concepts arising from litigation unfortunately imbedded in a conundrum involving private law, public international law, and public policy dimensions. Its legal logic and wisdom aside, it leaves little uncertainty about its effects on the current U.N. settlement process in Cyprus, and hence on Turkey's accession progress. The ECJ's ruling fundamentally alters the balance of power in the ongoing U.N. negotiations regarding the reconciliation of the island because it grants Greek Cypriots an alternative method, outside of a negotiated agreement with the TRNC, to reclaim their property in the North. Hence, little incentive to negotiate or cooperate remains. Nowhere in the antiseptic text of the judgment does the ECJ mention these negotiations, nor the human implications of the Greek Cypriot and Turkish Cypriot people.

The decision has been widely condemned by Turkish Cypriots, for it flatly denies the legitimate existence of the TRNC, casts further doubt on its property values, disempowers the reunification process, and thus, undermines the accession of their sole ally and guarantor, Turkey. The ECJ's grand chamber ruling substantially weakens the TRNC's negotiating leverage in the U.N. talks, as it has naturally siphoned off much of the Republic of Cyprus's incentive to negotiate or compromise toward reconciliation in earnest. If Greek Cypriots can pursue northern Cypriot property claims in their own home courts, why would their government compromise in international negotiations on these rights?²⁹² The thousands of judgments that are certain to follow the *Apostolides* precedent will surely destabilize the entire real property regime of the TRNC. The government of the Republic of Cyprus naturally welcomed the Court's decision.²⁹³ Armed with this judgment, the Republic of Cyprus will not likely contribute to the further progress on this important issue. This result will never be adopted by the TRNC or Turkey, thus, the *Apostolides* ruling or strategy ultimately leads back to stalemate.

British MEP, Sarah Ludford, found the *Apostolides* decision problematic: "The technical legal correctness of this ruling may be

292. "The long-awaited and complex ruling is likely to strengthen any legal claims Greek Cypriots might want to assert over their former properties, and a lawyer warned foreigners with suspect land there to seek advice." Bottollier-Depois, *supra* note 263.

293. *Cyprus Welcomes EU Court Ruling on Property in North*, FIN. MIRROR, Apr. 28, 2009, http://www.financialmirror.com/News/Cyprus_and_World_News/15123.

unquestionable, based on EU measures providing for ‘mutual recognition’ of judgements between two EU countries, in this case the Republic of Cyprus and the UK.²⁹⁴ However, Ludford points out the blaring irony (or legalistic myopia): “[I]t will strike many as strange that while EU law is suspended in north Cyprus due to the division of the island—so the judgement cannot be enforced there—the same EU law can be used for a backdoor enforcement of the claim in UK courts.”²⁹⁵

Moreover, the *Apostolides* decision deepens the frustrations of Turkish-Cypriots for another reason: they voted for reunification under the comprehensive U.N. peace plan, which included settlement of the property issues, only to have it rejected by the Greek-Cypriots.²⁹⁶ And, as noted in the previous section, the EU’s heralded promises to end the TRNC’s isolation have yielded little in reality.²⁹⁷

The lead negotiator for the Turkish Cypriots in the current U.N. talks called the decision a “great blow” to negotiations for reuniting the island itself.²⁹⁸ The President of the TRNC agreed:

A despondent Mr. Talat says the EU is to blame for Turkish Cypriots’ waning enthusiasm for re-unification. He cites the EU’s failure to open markets to northern Cyprus trade and accuses it of favouring Greek Cypriots. After the ECJ decision [in *Apostolides*], he said ‘this is crystal clear, there is no vagueness.’²⁹⁹

Talat directly linked the property issues to the overall settlement process, issuing a statement after the *Apostolides* judgment was announced: “Unless the Cyprus problem is solved, it is not possible to solve the property issue comprehensively.”³⁰⁰ The TRNC authorities will continue issuing property titles for purchasers of dispossessed land,

294. Baroness Sarah Luford, *European Court Judgment on Property in North Cyprus*, May 1, 2009, http://www.sarahluford.libdems.org.uk/news/001214/european_court_judgement_on_property_in_north_cyprus.html.

295. *Id.*

296. The Annan Plan would have adjusted the border between the two parts of the island northward, allowing some 120,000 displaced Greek-Cypriot to return to the former lands, but the trickier issue is what to do about some “100,000 Greeks who might claim property in the Turkish part. . . .” *Bargaining Chips, Anyone?*, *supra* note 194, at 68.

297. Luford, *supra* note 294.

298. Strauss, *supra* note 261.

299. *Id.*

300. *EU Court Backs Return of Northern Cyprus Property*, EU BUSINESS NEWS, Apr. 29, 2009, <http://www.eubusiness.com/news-eu/1240908422.64/>. More recently, Talat felt “weak and angry” in the ongoing peace talks as a result of the the ECJ’s judgment (and other events). *Turkish Cypriot Feels Weak But Hopeful on Peace Talks*, HÜRRIYET DAILY NEWS, Aug. 8, 2009, <http://www.hurriyetdailynews.com/n.php?n=turkish-cypriot-leader-feels-weak-but-hopeful>.

according to Talat, and if the U.K. court enforces the Greek Cypriot claims, “our people will push us to get out of negotiations.”³⁰¹

Ultimately, MEP Ludford concluded,

The [*Apostolides*] decision makes it all the more vital that the EU finally weighs in to help push forward quickly a political settlement on the island. It has always been recognised that property restitution or compensation, for the rights of both Greek and Turkish Cypriots forced to leave their properties at the time of partition, will be one of the trickiest issues. It is an indictment of politicians, Cypriot but also European, that this matter has been left to lawyers to sort out because negotiators have failed for so long.³⁰²

Kutred Ozersay, a law expert at the East Mediterranean University in Famagusta in northern Cyprus, points out that the decision also could hinder the reunification negotiations because it “will create tension between the two communities.”³⁰³ Moreover, “[p]roperty rights are one of the sensitive aspects of the latest round of reunification negotiations between Greek Cypriot President Demetris Christofias and the northern leader, Mehmet Ali Talat.”³⁰⁴

The popular Turkish daily newspaper, *Hürriyet*, cited experts predicting that the *Apostolides* decision threatens both Turkey and the TRNC with economic ruin.³⁰⁵ The director of the Center for Global Political Trends in Istanbul estimates the total cost of the disputed claims is around \$40 billion USD, and he agrees with other experts that the only reasonable solution was to resolve the disputes through a comprehensive plan negotiated between the two governments on Cyprus.³⁰⁶ The Cyprus expert for the Eurasian Strategic Research Center concluded that the ECJ’s decision removed “Turkish Cypriot sovereignty over the northern part of the island.”³⁰⁷

Soon after the judgment was announced, Turkish Cypriot daily newspaper, *Kıbrıs*, reported that the Cypriot Platform of Economic Organizations, comprising seven Turkish Cypriot organizations, had held a press conference and presented its declaration on the ECJ *Apostolides*

301. Strauss, *supra* note 261.

302. Ludford, *supra* note 294.

303. *Cyprus Welcomes EU Court Ruling on Property in North*, *supra* note 293.

304. *Id.*

305. Sevdâ Yüzbaşıoğlu, *Cyprus Court Decision to Carry a Steep Cost*, HÜRRIYET DAILY NEWS, Aug. 20, 2009, <http://www.hurriyet.com.tr/english/domestic/11553480.asp>.

306. *Id.*

307. *Id.*

decision.³⁰⁸ The document, which will also be presented to the U.N., emphasized that the decision was improper and that it would negatively affect efforts for a Cyprus settlement.³⁰⁹

Finally of course, without settlement of this issue, “there is little prospect of Greek Cypriots lifting blocks on key areas of Turkey’s EU membership negotiations.”³¹⁰ The Turkish government naturally rejected the ECJ decision as “unacceptable” and “hurting” Cyprus’s ongoing peace talks, insisting that “[t]he ‘Cyprus Republic’ does not exist anymore as a partnership state which was founded in 1960, and the Greek Cypriots do not have any jurisdiction over Turkish Cypriots nor authority to represent the entire island.”³¹¹ The U.N. negotiation talks broke down the month after the *Apostolides* decision when the Turkish Cypriots wanted fuel to be allowed through one of the cross-over U.N. checkpoints and the Turkish Cypriot leaders expressed skepticism that the talks would succeed.³¹²

E. The 2009 TRNC Parliamentary Elections

Finally, and further dimming hopes for Cyprus’s reunification, nine days before the ECJ’s announcement of its *Apostolides* judgment, voters in the April 2009 TRNC parliamentary elections demonstrated their disappointment in the island’s reconciliation process and their “growing distrust of [the] policy of reconciliation with the majority Greek Cypriots.”³¹³ The election produced a new Prime Minister with an absolute majority in the parliament, generating a change in regime, and “returning to power an old-style nationalist party, many of whose voters oppose reunification.”³¹⁴ Pointedly, the seventy-two year old new Prime Minister and hawkish leader of the Turkish Cypriot National Unity Party (“UBP”),

308. Republic of Cyprus Press and Information Office, <http://www.news/cyprus/tcpr/2009/09-06-19.tcpr.html#05> (last visited June 9, 2009).

309. *Id.*

310. Strauss, *supra* note 262.

311. *Turkey Says ECJ Ruling on Cyprus Property Case Hurts Peace Talks*, HURRIYET, <http://www.hurriyet.com.tr/english/domestic/11659312.asp> (last visited June 3, 2009).

312. *Turkish Cypriots Pessimistic*, KATHIMERINI, May 23, 2009, http://www.ekathimerini.com/4dcgi/w_articles_world_2_23/05/2009_107427.

313. Odul Asik Ulker, *Hardliners Win Turkish Cypriot Vote*, AGENCE FRANCE PRESSE, Apr. 19, 2009, 4/19/09 AGFRP 21:19:00 (Westlaw). See also *A Hawkish Problem*, *supra* note 225, at 57. Election results reflect “voters’ disillusion over the UN-sponsored talks that have dragged on.” *Id.*

314. Strauss, *supra* note 261. The new government officially assumed duty on May 18, 2009. *Turkish Cypriot Government Wins Confidence Vote*, AGENCE FRANCE PRESSE, May 18, 2009, 5/18/09 AGFRP 09:40:00 (Westlaw).

Dervis Eroglu, openly questions the course of the settlement negotiations and any federal arrangement for reunification.³¹⁵

In the elections, Eroglu's UBP party won twenty-six of the fifty seats in the TRNC legislature, empowering it to form a cabinet without need for a coalition.³¹⁶ Current President Talat, of the more moderate Republican Turkish Party ("CTP"), remains in office until April 2010, when the presidency is up for regular election again.³¹⁷ Thus, Talat will continue to lead the TRNC's U.N. negotiating team, but his bargaining position is weakened by the divergence of governmental power between the opposing political parties that control the head of state and head of government: his room for maneuver will be limited by a parliament dominated by the nationalists,³¹⁸ and his authority to make any concessions necessary in the negotiations may be questioned.³¹⁹

Eroglu's UBP Party claimed 44% of the vote, giving it enough seats for an absolute majority in the parliament and representing a strong rebuke of the more moderate CTP allied with President Talat.³²⁰ The right wing EBP won 26 of the 50 Parliament seats, with the local press attributing the defeat to voters' wishes to punish the CTP for the lack of progress in the reunification talks, the continuing isolation of the TRNC, and the worsening economy.³²¹ Talat explained after the election that the nationalists had exploited the people's disappointment with the failure of the EU and the international community to fulfill their promises.³²² The UBP as a party does not support the federal model central to the ongoing negotiations, but rather favors two separate states, calling for a rethink of the reunification process.³²³ The people of the TRNC are losing their belief "day by day that the negotiation process will yield a result."³²⁴

Two days after the election, Eroglu announced that he would pursue a settlement of the island's divisions, but he wanted to reconsider the

315. Strauss, *supra* note 261.

316. *Turkish Cypriot Vote Winner Urges Two-State Deal*, AGENCE FRANCE PRESSE, Apr. 21, 2009, AGFRP 07:07:00 (Westlaw).

317. Ulker, *supra* note 313.

318. *Nationalists Sweep Votes in General Elections in Turkish Cyprus*, HÜRRİYET DAILY NEWS, Apr. 22, 2009, <http://www.hurriyet.com.tr/english/world/11469225.asp?gid=244>.

319. Charlie Charlambous, *Cyprus Talks Resume under Shadow of Hardline Poll Win*, AGENCE FRANCE PRESSE, Apr. 21, 2009, 4/21/09 AGFRP 11:58:00 (Westlaw).

320. *Turkish Cypriot Election Dims Reunification Hopes*, EURACTIV, Apr. 20, 2009, <http://www.euractiv.com/en/enlargement/turkish-cypriot-election-dims-reunification-hopes/article-181393>. Talat's "room for maneuver is likely to be limited by a parliament dominated by the UBP. *Id.*

321. Ulker, *supra* note 138. The talks have seen little tangible progress. *Id.*

322. Charlambous, *supra* note 319.

323. *Id.*

324. Ulker, *supra* note 138.

approach to the negotiations³²⁵ and stressed that any settlement should be based on two states—a concept strongly opposed by the Greek Cypriots that differs from the bi-zonal federation being discussed at the U.N. talks.³²⁶ Eroglu was direct: “There are two peoples, two states and two democracies on the island of Cyprus. We support any settlement . . . within that framework.”³²⁷

Some complain that “[t]he UBP government is making the already complex settlement negotiations . . . even more difficult . . . [as Eroglu] is pushing for his party to have a seat at the negotiating table.”³²⁸ He pledged during his campaign to scrap the TRNC properties commission, which was designed to establish a process for returning property to Greek Cypriot owners, a move that could only undermine the settlement talks.³²⁹

News sources reported that, following the election, Turkish Cypriot nationalists celebrated, but “despair has gripped the Republic of Cyprus,” and Cypriot leaders characterized it as a “negative development for the efforts to find a solution to the Cyprus issue.”³³⁰ Talat stated that resistance to the reunification talks by northern Cypriots will only harm Turkey’s progress towards accession.³³¹

V. CONCLUSION

Turkey’s bid for membership in the European Union represents the latest and probably most critical challenge in the 200-year history of Ottoman and Turkish efforts to adopt the European political, economic, and cultural paradigm.

—Ioannis N. Grigoriadis, *Turkey’s Accession to the European Union: Debating the Most Difficult Enlargement Ever*³³²

The 2009 political and judicial developments in the EU, Turkey, and the Turkish Republic of Northern Cyprus plainly show a more negative context of Turkey’s EU accession negotiations. These events and the

325. *Nationalists Sweep Votes in General Elections in Turkish Cyprus*, *supra* note 318.

326. *Turkish Cypriot Vote Winner Urges Two-State Deal*, *supra* note 316.

327. Charlambous, *supra* note 319.

328. Chislett, *supra* note 114, at 17.

329. *A Hawkish Problem*, *supra* note 225, at 57.

330. Clive Leviev-Sawyer, *Strong Reactions to Northern Cyprus Election*, SOFIA ECHO, Apr. 20, 2009, http://sofiaecho.com/2009/04/20/707827_strong-reactions-to-northern-cyprus-election.

331. *Turkish Cypriot Election Dims Reunification Hopes*, *supra* note 320.

332. Grigoriadis, *supra* note 7, at 147.

currents underlying them suggest, moreover, that Turkey will not achieve full accession in this era.

The broad rise of anti-Islamic, anti-Turkey rhetoric, and enlargement fatigue in general, concurrent with the right-wing sweep in the European Parliament elections, bode ill for Turkey's accession progress. The ongoing accession dialogue between Turkey and the EU has advanced slowly and has proven largely unproductive of its aims. The numerous vetoes of the accession negotiations, in this context of rising anti-Turkey politics, flatly halt substantive negotiations on fundamental aspects of the accession process. In the same year, the European Court of Justice's powerful *Apolostides* judgment coincided with the arrival of the new right-wing TRNC government, further tainting the environment for compromise on the Cyprus division, which is key to Turkey's accession. These new events highlight the negative environment engulfing the process as to warrant the conclusion that Turkey and the EU should modify the present, unfruitful accession discussion, and advance to a new, realistic framework for constructive dialogue and collaboration.

Chrysotomos Pericleous, a writer with a broad international education and first hand experience in the Cyprus issues, recently expressed foreboding if the Cyprus division is not resolved and Turkey continues to be excluded from the European Union:

[The EU's] failure to restructure its political project and undertake the balancing role between the United States and Islam that history bestows on it will leave the way open for Huntington's 'prophesy' while Europe, confining itself to the margins of international developments, will suffer the consequences of such a catastrophic course. The direct consequence of a possible exclusion of Turkey from Europe will certainly fall, after the Turkish people, on Cyprus and Greece. In particular, with the Cyprus problem unresolved, and Aegean disputes still pending, the dangers will be even greater.³³³

He also worries that Turkey could "return to the aggressive attitudes of the first half of the twentieth century against both Greece and Cyprus."³³⁴ Resolution of these issues is all the more urgent because the EU and the Greek Cypriots faced a December 2009 deadline to decide how to handle the scheduled review of Turkey's compliance with its obligations to extend formal recognition to the Republic of Cyprus.³³⁵ December 2009

333. PERICLEOUS, *supra* note 16, at 76.

334. *Id.*

335. Strauss, *supra* note 261.

represents a perilously critical intersection for Turkey, Cyprus, and Europe.