
The Cyprus Issue Project

March 9, 2014

The “Spirit of Constructive Ambiguity” behind the Joint Declaration

Vasileios P. Karakasis

Introduction

[Report No. 4 of the Cyprus Issue Project](#) elaborated on the interplay between "carrots and sticks" that led to the drafting of the [Joint Declaration](#) between Nicos Anastasiades and Derviş Eroğlu. The purpose of that project was to explain the momentum for the launch of the reunification talks. The objective of the Report No.5 is to cast light on the content of the Joint Declaration. It should be stressed that both leaders have agreed that this document does not reflect the (re)resolution of the Cyprus problem. It rather constitutes, in their view, the kick-starter of the talks and lays the ground upon which the respective negotiations will unfold.

Before examining the content of this document, it would be interesting to grasp the domestic reactions evoked by the announcement of the Joint Declaration. The official positions in the Northern side signaled a message of unity and a sense of satisfaction. The spokespersons of the National Unity Party (UBP), the Republican Turkish Party (CTP), the

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youth organization of the Democratic Party (DP) and the Social Democratic Party (TDP) welcomed this development and expressed their hopes for attaining a final settlement. In the Republic of Cyprus, the signs do not seem auspicious. With the exception of the DISY (the centre-right wing party Anastasiades belongs to), the AKEL constituency (the communist party which demonstrated its cautiousness on certain points) and the rather positive(attentive) attitude of Archbishop Chrysostomos, the public opinion in Cyprus has manifested, its skepticism/concern, to a certain degree at least, on the document. The coalition partner DIKO came out all guns blazing, describing the agreement on the text as an “extremely negative development” justifying on these grounds, initially at least, its decision to leave the government coalition.

Aim of this paper is not explain whether the Joint Declaration reflects better in one or another way an eventual convergence between Greek Cypriot and Turkish Cypriot positions, since- as reported by Turkish Cypriot daily Yeni Duzen newspaper (11.2.2014)- Eroğlu has argued that the Joint Declaration contains statements that are "abstract and open to interpretation" (“ortak açıklamanın soyut ve yoruma açık ifadeler içerdiğini”). In this respect and in line with this assumption, central objective of this report is to demonstrate why this text is governed by a spirit of "constructive ambiguity" (Kanli 19.2.2014). To this end, the paper will draw a line of argumentation structured as follows:

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- a. In the first part the effort will be concentrated on highlighting the notion of "constructive ambiguity" from a mediator's point of view. More specifically, it will analyze why a mediator adopts this concept in dealing with intractable conflicts (like the Cyprus case)
- b. the second part will illustrate these expressions/phrases/words that might become subject to debates and questioning -as regards their legal and political substance- in the (short or the long) run of the forthcoming negotiations. In other words, it will prop up the ambiguous points of that document.

A. The notion of constructive ambiguity

We talk of policy problems in words. Nevertheless, according to the Greek philosopher Aristotle, the number of items that form the vocabulary of any human language is much smaller than the number of realities that the vocabulary-items are supposed to refer to¹. The way words are used to represent things constitutes a subject usually treated in the domains of rhetoric and literature. That is why symbolic representation resembles the

¹Περίτων Σοφιστικών Ελέγχων in his Textbook Collection *Λογικά ή Όργανον*

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essence of problem definition in international politics. The meaning of symbol depends on how people interpret it, use it or respond to it (Stone 2002; 137). To clarify, the meaning and or/essence of the words are not intrinsic to it, but are invested by it, by people who make use of it.

One of the features of symbols is ambiguity, the capacity to have multiple meanings. Although the primary aim of language is to transmit information from human being A to human being B, ambiguities seem to run contrary to that objective, since they leave a message recipient with a less transparent piece of knowledge (Pehar 2001; 163).

The arising question is why would a mediator put ambiguous wording in an international (peace) agreement or a joint declaration? Before addressing this question, we should consider that diplomacy, as set forth by Putnam (1988), is a two-level game for a political leadership. National political leaders appear at two game boards:

- a. at a national level, where they have to satisfy demands, quell resistance from domestic pressure groups, opposition parties or seek power by constructing coalitions among them;

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- b. at an international level, where the leaders try to maximize their own ability to satisfy the above mentioned domestic pressures, while minimizing the adverse consequences that might arise from the international negotiations.

Bearing this in mind and adopting a mediator's point of view, the rationale behind drafting texts that entail an ambiguous content is to overcome deadlocks by avoiding and postponing detailed interpretations until implementation (Jonsson and Aggestam 2009; 42). If the two disputants hold strong and contradictory interests, if they are reluctant to concede a part of their demands and/or if the negotiations are running short of time and they are not able to discuss the required concessions in more detail, then the issue of conflicting interests can be "resolved" by simulating a compromise in a very rudimentary form. The mediator may establish a formula that seems open to different interpretations and understandings. The interpretations can carry different meanings, A and B; the one is destined to gratify the interests of party A and the other to gratify the interests of party B (Pehar 2001; 170).

Based on the above, ambiguities might guarantee two things:

- a. on the one hand, the parties retain their own "individual" perceptions regarding "how things should proceed";
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- b. on the other hand, one common language is employed, which both parties may later equally use (ibid.).

This process is designed to facilitate negotiation and compromise because it enables the opponents to claim "victory" to their domestic audience from a single resolution. This way, leaders gain the "proper legitimacy" and remain committed to the "negotiations track".

I should underline, though, that certain dangers cannot be neglected. As Jonsson and Aggrestam (2009; 42) argue, despite the dictum *-pactasuntservanda-* statistics show that many cases of negotiated peace agreements (like the Cyprus case with the London and Zurich agreements) suffer from incomplete implementation. This happens because:

- i) this formula may exacerbate an already fragile situation governed by mutual suspicion and mistrust and give food to new hostilities, as these ambiguities need to be addressed, interpreted and agreed upon;
- ii) a "skeptical scrutiny" of a peace agreement may develop, weakening the support for an agreement significantly. That is why some diplomats and scholars alike are stressing the

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need for enforcement mechanisms as well as promoting the idea of acting custodians over peace process.

B. Constructive ambiguity in the Joint Declaration

Drawing upon this theoretical background, it is to be seen how this concept applies to the Joint Declaration. As clarified above, aim of this part is not to illustrate whether this document can be beneficial to the Greek Cypriots or the Turkish Cypriots. From the current standpoint this does not matter since, after all, this document, other declarations alike, is (supposedly) not legally binding. Its content and format seem deliberately chosen to indicate that the parties merely intend to declare certain aspirations and not create binding obligations. The objective of this piece is to highlight the “constructive ambiguity spirit” behind this document. To this end, certain points from this document could be underlined as becoming subject to a continuous political debate in the above mentioned “game boards” (in the domestic realm and during their bilateral interaction).

i) Paragraph 1: The status quo is unacceptable and its prolongation will have negative consequences for the Greek Cypriots and Turkish Cypriots.

Although it is hard to disagree with this sentence as it sounds, the challenge, nevertheless, is to comprehend what is actually meant by the expression “unacceptable status quo”. In a

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press conference held after the announcement of the Joint Declaration, President Anastasiades presented his reflection on this: the “presence of occupying troops, the continuous division, the illegal exploitation of the Greek properties, the violation of human rights and fundamental freedoms, the settlement, the destruction of our religious and cultural heritage, the need that pushes the Greek Cypriots to sell their properties [in the northern part], the alienation of the Cypriot Hellenism from its ancestral home and the substantial consolidation of the *faits accomplis* created by the invasion”. Nonetheless, none of these words is used in the text to match his interpretation of the unacceptable *status quo*. Georghios Piki (Interview to Kostas Venizelos 23.2.2014), former President of the Supreme Court of Cyprus and former member of the International Criminal Court claims that this expression in the first paragraph should have been backed by the relevant UN Security Council Resolution² that in their turn could match Anastasiades’ words. In other words, their potential inclusion could justify his interpretation of that expression.

The Turkish Cypriot position might give a different meaning of the very same expression: the economic, political and legal isolation from the international community whose prolongation has contributed to the deterioration of the living standards in the north. In

² The UN Security Council Resolutions [367](#) (1975), [541](#) (1983), [544](#) (1984), among others, are indicative in this respect

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the view of Derviş Eroğlu, the unacceptable status quo lies upon the non-recognition of the Turkish Cypriots' sovereignty on the island. Furthermore and with respect to the (non) presence of the Turkish troops on the island—as an issue raised by Anastasiades-, he refuted every possibility related to their withdrawal. "The presence of Turkish troops in Cyprus is a red line for Turkey and it will never approve their withdrawal" were his actual words in Anadolu Agency (20.2.2014). To legally justify the necessity of Turkey's military presence, he used the agreement between Turkey, the United Kingdom and Greece (the Treaty of Guarantee) as his central argument³.

An **additional** interpretation should also be inserted in the "status quo" equation. Professor Crawford, whose advice on the Draft Joint Declaration was asked by President Anastasiades, provides a different point of view on the same expression: "... both communities in Cyprus are entitled to be represented in the government of Cyprus and of their own communities, and the unification of Cyprus requires the consent of both communities. It is the purpose of the proposed settlement negotiations to move towards that situation, recognizing that "the status quo is unacceptable"⁴.

³ Which appoints the three states as guarantors of the island's two communities

⁴ The detailed version is <http://www.sigmalive.com/files/download/9560>

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All these lead to the conclusion that the phrase in paragraph 1 is not clear-cut but rather ambiguous.

ii) Paragraph 2: “All unresolved core issues will be on the table, and will be discussed interdependently”.

First of all, the term “core issues” has not been clearly identified in this paragraph. I suppose that the definition of the “core issues” will be developed in the course of the negotiations. Leaving this vague-laden notion aside, the presence of the accompanying participle “unresolved” may indicate the existence of resolved core issues. The question that could arise is twofold: what are the “resolved core questions” (if any) and why have they not been addressed in this paragraph? If there are no resolved core issues, then the use of the word “unresolved” is to be justified. Otherwise, it might be interpreted as misleading or, at least, inappropriate.

iii) Paragraph 3: “The united Cyprus, as a member of the United Nations and of the European Union, shall have a single international legal personality and a single sovereignty, which is defined as the sovereignty which is enjoyed by all member States of the United Nations under the UN Charter and which emanates equally from Greek Cypriots and Turkish Cypriots”.

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A brief background on this issue deems necessary. The standing position of the Greek Cypriots has been that the United Federal Cyprus should constitute the continuity of the Republic of Cyprus as established in 1960. On the other side, the traditional Turkish Cypriot tenet is that the new state should come into being after the union of two pre-existing states, meaning the Republic of Cyprus (recognized by the entire international community-except for the Republic of Turkey- and being a member of the UN and the EU) and the “Turkish Republic of Northern Cyprus”⁵ (officially recognized only by the Republic of Turkey). According to this rationale, the Turkish Cypriots hope they could gain a form of legitimization in the eyes of the international community.

Tracing back to the formulation of the Annan Plan in 2003, Lord David Hannay, the so called “architect of the Annan plan”, claims that the UN had been initially reluctant to touch upon the issue of continuity. The reason was that this parameter was way too sensitive for the Greek Cypriots, although, afterwards, UN “gradually warmed to the idea” (2005; 162). To deal with this issue, the legal advisor of Kofi Annan, Didier Pforrer developed the notion that came to be known as the “virgin birth” or parthenogenesis of new Cyprus. This concept

⁵ The international community, bound to the above mentioned UN Security Resolutions has, so far, not recognized “TRNC. Otherwise, the international community would have supposedly legitimized the faitsaccomplis created by the 1974 Turkish military invasion (as the Turkish military intervention has been described in these Resolutions).

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describes a politically new, but legally not new, Cyprus with elements of continuity, with what had passed on both sides of the island since 1963⁶. This “new Cyprus” would come into being the day after the approval by the referendums of the two sides in 2004 (Emilianides2006; 183-184).

In his speech, Anastasiades claimed that due to the above depicted phrase-“the united Cyprus, as a member of the United Nations and of the European Union”- the continuity of the Republic of Cyprus has been guaranteed. According to his point of view, the United Cyprus will not be obliged to re-submit an application to become a member state both in the UN and the EU since it is an already existing member. The fact, nonetheless, that the word “continuity” is missing, might raise, from the Turkish Cypriot point of view, sincere objections on whether his argumentation is valid.

Why does this membership issue matter? Anastasiades supports that the identity of the United Cyprus, as a member of the UN and the EU, ensures the maintenance of a “single international legal personality” and a “single sovereignty” refuting the Turkish Cypriot

⁶ When the Turkish Cypriots abandoned the Republic of Cyprus after the (initially Turkish and afterwards Turkish Cypriot) rejection of Archbishop Makarios’ amendments to the 1960 Treaty of Establishment

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aspirations for the recognition of distinct sovereignties that should be legally exercised on the island.

Nevertheless, several points should be projected. The sovereignty, as a notion, entails different dimensions. According to Krasner (1999; 3), the term sovereignty has been used in several ways, two of which are “international legal sovereignty” and “domestic sovereignty”. The first notion includes practices associated “with mutual recognition, usually between territorial entities that have formal juridical independence” (for example member states of the UN). Domestic sovereignty is identified with the “formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity” (Krasner 1999; 4).

Bearing this distinction in mind, the Joint Declaration lays the emphasis on the “international legal sovereignty”, which springs from the identity of the Republic of Cyprus as an UN and EU member. As regards the domestic aspect of the sovereignty, it “emanates equally from Greek Cypriots and Turkish Cypriots”. This phrase might be interpreted as implying that the distinct national identity (between Greek Cypriots and Turkish Cypriots) and not the common Cypriot citizenship (in other UN member states alike) constitutes the central pillar upon which “domestic sovereignty” on the island is legitimized. The fact that

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the sovereignty does not draw its power from the citizens living on the island, regardless of their identity, language and religion –other communities included (e.g. Maronites, Latins, Armenians and others)- seems a bit problematic. The reference to this distinct national identity and not to a common Cypriot citizenship might also lead to the assumption that this future state will be based upon a loose association between two nation-states establishing the United Cyprus, a phenomenon that is quite common in confederations and not in federations.

iv) Paragraph 3: “There will be a single united Cyprus citizenship, regulated by federal law. All citizens of the united Cyprus shall also be citizens of either the Greek-Cypriot constituent state or the Turkish-Cypriot constituent state. This status shall be internal and shall complement, and not substitute in any way, the united Cyprus citizenship”.

These phrases, referring to the single citizenship might challenge the above assumption (iii) and reflect better the image of a federation rather than that of a confederation. The common practice has shown that citizens in a confederation owe allegiance only to the states wherein they live but citizens in a federation enjoy double citizenship and owe allegiance to the states of the domicile and the federation. Taking these into consideration this reference could “blunt” the existence of the confederation elements that are presented in the previous phrase. In any case, the format of this paragraph as well as the content of

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these two phrases provides the readers with an elusive understanding on the (federal or con-federal) vision upon which the future state of Cyprus would be constructed.

Both Greek Cypriots and a significant part of the Turkish Cypriots might raise serious concerns as to whether Turkish settlers should acquire the Cypriot citizenship or not. Since 1974, the authorities of the Republic of Turkey, breaching the Fourth Geneva Convention, have embarked upon a policy of systematic settlement aiming to change the demographic character of the island. Based on reports confirmed in both the Turkish and Turkish Cypriot press, hundreds of thousands people in the northern Cyprus come from the Turkish mainland and are of Turkish citizenship. Over the same period and according to estimations, more than 50.000 Turkish Cypriots have emigrated from the island dropping their number on the island from more than 100.000 in 1974 to 90.000 at present. The issue is quite complicated and cannot be addressed in a joint declaration. There is a chance that it might be embedded in the “all unresolved issues” category (paragraph 2).

v) Paragraph 3: The Federal constitution will also provide for the residual powers to be exercised by the constituent states. The constituent states will exercise fully and irrevocably all their powers, free from encroachment by the federal government. The federal laws will not encroach upon constituent state laws, within the constituent states'

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area of competences, and the constituent states' laws will not encroach upon the federal laws within the federal government's competences.

The sphere of competence for the constituent states will bring up a debate in the run of negotiations. This topic is closely affiliated with the sovereignty question that was explained above. The traditional position of the Greek Cypriot has been that sovereignty should reside in the United Federal State alone, manifesting their traditional reluctance to contemplate any explicit division of sovereign state between the federal state and the composing entities. In contrast, the Turkish Cypriots want to remain masters in their own houses, fearing that the Greek Cypriots, being populous and economically more prosperous, through their participation in a strong federal state, would have a strong say in the Turkish Cypriot affairs⁷.

A constituent state, in general, is a territorial and constitutional entity forming part of a sovereign state. It holds administrative jurisdiction over a defined geographic territory and is a form of [regional government](#). In our case, the notion of constituent states –“*a precedent which existed in the not very happy example of the Yugoslav federal constitution*”

⁷ Influenced by they call the 1960s experience

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(Hannay 2005; 152)-is coined by Lord Hannay who suggested Alvaro de Soto⁸ in 2003 the adoption of this term instead of “component states”⁹. The latter tucked this notion away for future reference (the final version of the Annan Plan at the end of 2003 is indicative). This concept became the buzzword in the course of the post-Annan negotiations as well.

According to paragraph 3, the constituent states are fully responsible for exercising their residual powers. What does not seem clear is how these powers will be distributed and whether the Federal State or the constituent states are going to have the upper hand in defining their area of competences. If the responsibilities of both the Federal state and the constituent states are clarified from the very beginning in the federal constitution, without leaving any margin of maneuvering on behalf of the constituent states, then the “balance of power” between the Federal state and the constituent states leans towards the first one, since the Federal state will be the main responsible for defining all powers exercised in all parts of the island. This case reflects, to a significant degree, the diachronic aspirations of the Greek Cypriot position. If, however, the competences of the Federal State are exhaustively listed in the (Federal) Constitution and all the rest non-defined

⁸ UN Special Advisor of the former Secretary General Kofi Annan

⁹ Which as a term had evoked serious reactions from the Greek Cypriots that wanted sovereignty to be the sole prerogative of the Federal state with no reference at all to the component states having any attributes of sovereignty

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responsibilities rest within the good will of the constituent states, then the respective “balance of power” leans towards the constituent states. In that case, a potentially great maneuvering space regarding the way the constituent states intend to interpret and implement their residual powers, within their domestic polity, might result into a loose association between them. The reason is the absence of an alignment imposed by the Federal state. This hypothesis seems to capture the interest of the Turkish Cypriot position. Thus, both sides can interpret the content of the “residual powers” the way they want, confirming once again, the constructive ambiguity governing the Joint Declaration.

vii) Paragraph 3: Any dispute in respect thereof will be adjudicated finally by the Federal Supreme Court. Neither side may claim authority or jurisdiction over the other.

The emerging question here is the hierarchy between the laws of the Federal State and the laws of the constituent states. Let’s assume that a law, as an outcome of the states’ residual powers, challenges the validity of a federal law, and/or vice versa. Which law is superior to the other? The Federal Supreme Court, handling this dispute has to step up and come up with a decision. During the whole process, which law should be prioritized and according to which criteria? Besides that, how could the Federal Supreme Court enforce the application of its own decisions? Who will guarantee that its decisions will be binding for the constituent states?

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In this case, no answer can be straightforward. Addressing adequately these questions largely depends on the outcome of the above described “balance of power”. If this balance favors the Federal State and the Federal state manages to clearly define the area of competences for both sides (meaning for itself and for the constituent states) then the legal superiority of the federal laws might be possible. Antithetically, if the constituent states manage to arrange the area of competence on their own, then this superiority will be questioned.

Conclusion

I would like to conclude with an observation. As repeatedly established, I cannot assert whether this document matches better the interests of the Greek Cypriots or the Turkish Cypriots. The outcome of the forthcoming negotiations will prove whether this text, being the basis for negotiations, is to work for the benefit of the Cypriot citizens. Another point of concern should be raised though. The fact that we are talking about a Joint Declaration half a century after the “fiasco” (Emilianides 14.2.2014) of the Zurich experiment (that was constructed on checks and balances designed to protect the stakes of the guarantor powers rather than to promote the well-being of grassroots constituents) should bring up the

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following pre-occupation among the mediators: how could human societies edify their life on safe, stable and of long-term perspective foundations, if the latter depend on constructive ambiguities and controversial provisions?

Consequently, this [Cyprus Issue Project](#) aims to establish a roadmap that could lead to the transformation and not the resolution of the Cyprus conflict. The **anthropo-centric aspect** should have the protagonist role in shaping this new pattern of co-existence in the land of Aphrodite without, of course, neglecting the importance of certain domestic, international, political, economic and other factors.

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