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The EU and Cyprus: Principles and Strategies of Full Integration

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The Republic of Cyprus is an EU Member State like no other. Its history, geography and legal tradition differ markedly from those of most of its EU partners. Likewise, its path to EU accession has been unlike that of any of the remaining 26 EU Member States, not so much in terms of process but, rather, in terms of outcome. Finally, the overall circumstances of the Republic of Cyprus, whether constitutionally or politically, were, at the time of writing, unique within the EU, with the island claiming the dubious distinction of the longest-lasting UN peace-keeping mission in the history of the Organisation, coupled with a divisive ethnic Communities-driven Constitution (unprecedented in post-colonial history), continuing reliance on the 'doctrine of necessity' as the basis of its constitutional operation, 40,000 Turkish troops occupying around 38% of its territory, 38 years on from Turkey's military intervention in the summer of 1974, and no less than two sovereign (military) base areas (SBAs) on its soil, subject to a special legal regime, already prior to its accession to the EU, in May 2004. The Republic of Cyprus is, no doubt, not an 'ordinary' Member State, for yet another reason: despite being an outpost of the EU in the turbulent Eastern Mediterranean, barely 165 miles from Syria and Lebanon, the island belongs to the nucleus of the ambitious European unification project, having acceded to the euro area already in January 2008, hardly four years after its accession to the EU. At the time of writing, Cyprus was holding the rotating presidency of the EU, while partaking in the trials and tribulations in which the sovereign debt crisis in the euro area's periphery had plunged most of the EU.

The singularity of Cyprus has not escaped the attention of legal scholars. English language legal works on Cyprus abound, with their number having increased in recent years, in the run up to the accession of the Republic of Cyprus to the EU. What the generalists' works have in common is their treatment of, and emphasis on, specific (arguably very interesting) legal issues arising from the peculiarities of Cyprus' short but tempestuous constitutional and political history (such as the application, in Cyprus, of the doctrine of necessity, the island's singular common law tradition, interspersed with elements of continental law, or its constitutional uniqueness). For all its merits, what the extant generalist literature perhaps lacks is a global vision of Cyprus law, from a broader, socio-legal perspective. Works of scholarship addressing the relationship between Cyprus and the EU, the island's long and winded road to EU accession, and the impact of

accession on the resolution of the Cyprus dispute include those authored by Christou,[1] Markides,[2] and Vassiliou.[3] Legal works addressing the evolution of the relationship between the Republic of Cyprus and the EU and Cyprus' road to EU accession follow a common pattern, largely dictated by the subject matter's constraints, and reflected in the mostly descriptive approach favoured by many authors. A sub-set of works examine the germane but distinct issue of the impact of Cyprus' EU accession on attempts to resolve the Cyprus dispute, culminating in the Annan Plan and its unfortunate, but perhaps inevitable, rejection in April 2004 (see, in particular, Hoffmeister,[4] Kyriacou[5] and Theophanous[6]).

How does *The EU and Cyprus: Principles and Strategies of Full Integration* fit into the extant literature on Cyprus and the EU? Laulhé Shaelou's work is an outstanding example of legal scholarship, bringing together domestic, EU and international law perspectives, as well as economic, political and sociological insights, already present in some of her earlier work.[7] The work's cryptic (but, with hindsight, content-representative) title hints at the multi-disciplinary perspective that its author attacks her subject matter from. The book's coverage is comprehensive, addressing the socio-legal objectives of Cyprus' accession to the EU, the differentiated EU integration of Cyprus, as reflected in the 2003 Treaty of Accession, the *sui generis* (and largely unknown to many, including some of the better-informed observers) legal status of the SBAs, the political background to, and socio-political implications of, Protocol 10 as well as its relationship with other sources of EU law, and the 'Green Line' regime, as an 'incomplete attempt of institutionalisation of the principles of the Europeanisation of Cyprus through economic governance' (p. 320), while its treatment of the various subject areas dealt with in its pages is consistently thorough and lucid.

Perhaps more importantly, Laulhé Shaelou's work draws attention, throughout, to an issue borne out of the unique circumstances of Cyprus' integration in the family of European nations, which many will no doubt ignore: the feasibility, as a matter of Union law, of a *partial model of EU integration* – of which Cyprus is a unique example[8] – involving, however paradoxically, the

1 G. Christou (2004) *The EU and Enlargement: The Case of Cyprus*, Basingstoke: Palgrave.

2 A.F. Markides (2000) 'The Cyprus Problem as a Legal Issue within Europe', *Revue Européenne de Droit Public,* Vol. 12, No. 4, p. 1195.

3 G. Vassiliou (2007) *The Accession Story: The EU from 15 to 25 Countries*, Oxford: Oxford University Press.

4 F. Hoffmeister (2006) *Legal Aspects of the Cyprus Problem: Annan Plan and EU Accession*, Leiden: Martinus Nijhoff Publishers.

5 A.P. Kyriacou (2000) 'A Viable Solution to the Cyprus Problem in the Context of EU Accession', *The Cyprus Review,* Vol. 12, No. 1 (Spring), p. 35.

6 A. Theophanous (2003) 'The Cyprus Problem: Accession to the EU and Broader Implications', *Mediterranean Quarterly,* Vol. 14, No, 1 (Winter), p. 42.

7 See S. Laulhé Shaelou (2007) 'The European Court of Justice and the Anastasiou Saga: Principles of Europeanisation through Economic Governance', *European Business Law Review*, Vol. 18, No. 3, p. 619.

8 One situation that, arguably, presents some parallels with that of Cyprus is that of the russophone minority in the

temporary but, nevertheless, outright suspension of the four freedoms in an integral part of an EU Member State's territory, which is 'neither a State, nor a region, nor a territory, but part of a Member State of the EU' (p. 323). While in the particular case of Cyprus this somewhat unusual state of integration is the fruit of an, as yet, unresolved regional conflict, its 'partial' EU integration sets an interesting (or, as some might argue, dangerous) precedent, the parameters of which could be adjusted to fit the circumstances of other accession countries, in cases where the EU's interests in future enlargements would have to be weighed against and reconciled with other political, geostrategic or economic considerations through mutually agreed restrictions or limitations on EU integration, whether *rationae temporis* or *rationae personae* or otherwise. Restrictions or limitations flying in the face of the Treaty's four freedoms, and dictated by the particular circumstances of individual countries, are possible, as Laulhé Shaelou explains in her work. And if, in the case of Cyprus, such restrictions or limitations are attributable to the festering wound of military aggression, in other, future cases they may well be deemed necessary for different reasons, which the fathers of the Treaties had, in all likelihood, never envisaged, but which pragmatism and political expedience may recommend, whether as a means of avoiding that a candidate country is unduly penalised for circumstances largely outside its control (as in the case of Cyprus) or as a means of exerting pressure on candidate countries to further the legal, political, economic or other reforms necessary to render possible their full EU integration at a point in time subsequent (rather than, as one would have expected, *prior*) to that of their actual accession to the EU.[9] That 'some key areas of policy ... such as Schengen or the application of the foreign and defence policy ... were arguably not considered within the framework of the Treaty of Accession to the extent they deserved for Cyprus' (pp. 192-193) is clear, hence the uncomfortable relationship between the rationale of the derogatory regime of Protocol 10, as *lex specialis* for Cyprus, and the overall logic of the Treaty, and the concerns that cases of 'unfinished integration', whether now or in the future, will inevitably raise.

Laulhé Shaelou's work does not make for light or uncomplicated reading material: the reader should not expect a run-of-the-mill, conventional work of legal scholarship, of which there are many in the public domain, some better than others. Far from being intended as a point of criticism, this last observation explains why her work is of such interest, prompting the reader to reflect on integration possibilities that no level of familiarisation with the Treaties would, *prima facie*, suggest existed. Considering the multifarious (or, as some might argue, not without good

Baltic States, which, as Laulhé Shaelou notes, 'has been subject to a different treatment under domestic legislation even after EU accession, with some of them being treated as non-citizens' (p. 328).

9 The examples of Bulgaria and Romania are, in this respect, relevant: both countries acceded to the EU in January 2007, subject nevertheless to temporary restrictions in terms of the free movement of their workers within the EU. These restrictions were to be lifted, in principle, by 31 December 2011. At the time of writing, 9 EU-25 Member States continued applying restrictions to the free movement of workers from Bulgaria and Romania.

reasons, existential) challenges that Europe was confronted with at the time of writing, the realisation that there is more flexibility in the Treaties than one would deduce from their text is, no doubt, reassuring (or, depending on one's point of departure, sobering). It is this extraordinary degree of flexibility (which, even if unwanted, is, as the case of Cyprus readily shows, very real) that Laulhé Shaelou highlights throughout her work, together with its implications for a new Member State such as Cyprus.

All in all, *The EU and Cyprus: Principles and Strategies of Full Integration* is a refreshing and original work of legal scholarship, carved out of rather unassuming beginnings: the accession of yet another candidate country to the EU. This is the case not because the specificities of the 'Cypriot case' are not known to, or understood by, those interested in the study of EU or international law but, instead, because of what the narrative of Cyprus' 'unfinished' EU integration has to say about future, as yet unwritten integration stories, involving known actors (including Serbia, with particular emphasis on its losing battle over Kosovo, the Ukraine, and, possibly, Turkey) but rather less well-known, 'incremental EU integration' possibilities. As the case of Cyprus readily shows, more than one level of European integration is conceivable, however undesirable that may be: as Laulhé Shaelou aptly observes, such 'dual situations' have 'the potential of hampering ... full integration into the EU, if not addressed in a constructive way' (p. 5). Market integration can precede political integration and *vice-versa*. Incomplete integration, even absent any clear time-line for its completion, is also possible, however unwelcome. The case of Cyprus sets a clear precedent for all of the above and more, with Laulhé Shaelou's work providing invaluable insights to these possibilities, both academically and practically. It remains to be seen whether and how the precedent that Cyprus has set will be followed in other cases, or whether Cyprus' EU membership will retain its, admittedly baffling, uniqueness pending a solution to the intractable Cyprus dispute.

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