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# **POSITION PAPER (I)**

## **Regarding the archeological excavation at Kaleburnu, in the Karpas peninsula in North Cyprus**

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### **Introduction**

This position paper concerns objections raised by several faculty members of the Department of Archaeology and History of the University of Cyprus/Nicosia and concerns of the German embassy in Southern Cyprus, as expressed in letters to Dr Martin Bartelheim and Prof. Dr. Ernst Pernicka (see Appendices) regarding archeological work begun during July 2005 on a newly discovered Late Bronze Age site near the village of Kaleburnu (Galinoporni) in the Karpas peninsula, which is located in North Cyprus.

In 2004, Dr. Uwe Müller, Assistant Professor of Archeology at Eastern Mediterranean University, initiated an investigation into the site in cooperation with the local authority, the Department of Museums and Antiquities in Gazimağusa (Famagusta), and concluded that there was an imminent danger to archeological structures and an urgent need for a rapid rescue operation at the Kaleburnu-Kraltepe (Galinoporni-Vasilii) site: the archeological structures on the surface are visibly eroding, and need to be protected from further destruction, as they form part of both the cultural and natural heritage of the country and the region.

For this reason, Dr. Müller, with the Department of Antiquities and Museums, requested the collaboration of their colleagues Dr. Martin Bartelheim (University of Freiberg) and Prof. Ernst Pernicka (University of Tübingen), and applied for and received funding from the Fritz Thyssen Stiftung (Cologne/Germany) in order to preserve the site in accordance with UNESCO principles and regulations regarding the protection and preservation of such sites.

Initial work was conducted during July-August, 2005, which involved scientific excavation and survey work as well as analysis of finds. All steps of work, all discovered structures and finds were documented according to highest scientific standards.

The objections raised by the Department of Archaeology and History at the University of Cyprus concern four primary areas:

- (1) the legal status of the Turkish Republic of Northern Cyprus;
- (2) the legal status of Eastern Mediterranean University ;
- (3) the nature and legal status of the archeological work. in North Cyprus; and

(4) scholarly and professional ethics.

It is our position that these objections have no foundation in fact or in law, and that they are being made against the spirit of UNESCO declarations and the educational principles laid down by the European Commission (EUA, Erasmuc, etc).

#### **(1) The legal status of the Turkish Republic of Northern Cyprus**

The objections of the Department of Archaeology and History at the University of Cyprus appear in a letter [20 September 2005] under the heading: "Unprecedented and unacceptable disregard of international law and scholarly ethics committed by Prof. Ernst Pernicka and Dr. Martin Bartelheim – funded by the Fritz Thyssen Stiftung: Illegal excavation of the well-known archaeological site of Galinoporni in the occupied peninsula of Karpasia." This letter cites United Nations Security Council Resolutions as follows:

UNSCR 365(1974) AND 367 (1975) recognize the fact that the island was invaded by Turkey in 1974

UNSCR 541 (1983) Calls upon all the states not to recognize any Cypriot state other than the Republic of Cyprus

UNSCR 550 (1984) Reiterates the call upon all states not to recognize the purported state of the TRNC set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity.

It is clear that the main aim of UNSCR 365,367,541 and 550 is to prevent any secessionist acts and recognition of the Turkish Republic of Northern Cyprus. However, these resolutions do not constitute a legal ground to ignore or deny either the existence or the right of self-determination of the Turkish Cypriot Community as one of two co-founders of the Republic of Cyprus based on the London and Zurich Accords of 1959 and the 1960 Constitution of the Republic.

Under the provisions of the Constitution (Article 87, the Constitution of the Republic of Cyprus, 1960), which is held as valid in the Republic of Cyprus, each of the two communities was granted separate autonomy, among other things, in the administration of its own affairs, in particular those related to culture, religion and education. Following the well-documented destruction of the constitutional order by the Greek Cypriots in 1963 with the aim of annexing the island of Cyprus to Greece (ENOSIS), the two politically equal co-partner communities developed separate administrations on the island, and the Turkish Cypriot community, exercising its right to self-determination and sovereignty, has evolved administratively into a de facto, independent, democratic entity. In addition, Greek Cypriot sovereignty over the island effectively stops at the United Nations Buffer Zone (Green Line) which was established by Great Britain in 1963 and legitimized by the UN in 1964 in order to protect the Turkish Cypriots from subjugation. At present, all negotiations and agreements under UN auspices to reach a peaceful settlement of the Cyprus conflict are therefore based on a bi-communal and bizonal model.

On the other hand, through the April 2004 referenda, the Turkish Cypriots demonstrated that they are in favor of peace and a just settlement in Cyprus, and thus, that they can no longer be held responsible for the impasse that continues to exist. Indeed, the UN Secretary-General Kofi

Annan, in his report to the Security Council on 28 May 2004 (*see para. 93 of document S/2004/437*) indicates the need to lift all the restrictions on the Turkish Cypriot community.

*The decision of the Turkish Cypriots is to be welcomed. The Turkish Cypriot leadership and Turkey have made clear their respect for the wish of the Turkish Cypriots to reunify in a bicommunal, bizonal federation. The Turkish Cypriot vote has undone any rationale for pressuring and isolating them. I would hope that the members of the Council can give a strong lead to all States to cooperate both bilaterally and in international bodies, to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development not for the purposes of affording recognition or assisting secession, but as a positive contribution to the goal of reunification.*

Furthermore, the EU Commission, in its April 2004 “Proposal for a Council Regulation,” invites the European Council to extend direct aid for the economic development of the Turkish Cypriot community, and for the purpose of bringing the Turkish Cypriot community closer to the European Union (*see the attached article 2 of the Council Regulation Proposal*), as follows:

*The Turkish Cypriot community have expressed their clear desire for a future within the European Union. The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. Besides reconciliation and confidence building measures, it will cover, inter alia, the promotion of social and economic development, development of the infrastructure, and people to people contacts. Most of the activities will be therefore similar to pre-accession activities. Due to the isolation of the Turkish Cypriot community over the last years, the activities will have a strong focus on helping with acquis approximation, especially as regards investments to comply with European norms, inter alia, in the environmental and transport areas.*

Despite the fact that the EU considers them European citizens, Turkish Cypriots find themselves denied representation, as well as access to educational facilities and opportunities open to other European citizens because they are being forced, against all the principles recognized by the EU prior to and since the referenda, to submit to the authority of the Greek Cypriot government.

| Thus, the Turkish Cypriots, European citizens, are being denied their basic human rights, beginning with their right of self-determination. Since the establishment of the partnership Republic of Cyprus (ROC) in 1960, issues of education, culture and religious affairs have always been within the competence of Turkish Cypriot authorities and the Greek Cypriot authorities separately. The constitution of the ROC clearly enumerated these areas within the competence of community chambers (Article 87). Since the inter-communal conflict in 1963 that led to the collapse of the partnership Republic, Turkish Cypriots and Greek Cypriots have been governed under separate administrations where each have conducted educational affairs in practice, respectively, within their administrative bodies. This de facto practice has been legally acknowledged in a wider scope by Greece and the United Kingdom with the conclusion of the 30 July 1974 Geneva Declaration, which recognizes “the existence in practice in the Republic of Cyprus of two autonomous administrations that of Greek Cypriot Community and that of the Turkish Cypriot Community” (Para. 5).

By and large this practice has continued to exist, and is confirmed once more by the “Annan Plan.” In the final version of the Annan Plan which was submitted to separate and simultaneous referenda on 24 April 2004, educational matters were vested in the Turkish Cypriot and the Greek Cypriot Constituent States. Article 15 of the proposed constitution of the “United Cyprus Republic” provided that “the constituent states shall, within the limits of this Constitution, sovereignly exercise within their territorial boundaries all competences and functions not vested by this Constitution in the federal government” and the relevant article did not enumerate educational matters within the competence of the federal government. Moreover, the same constitution recognized the right of each constituent state to appoint representatives and conclude agreements on various matters including educational (Art. 18, para. 3 and 4, footnotes 16 and 18) representation.

Again, the basic legal document on Cyprus with regard to EU law is the Treaty of Accession signed on 16 April 2003, and particularly its Protocol 10. This Protocol has suspended the application of the EU *aquis* in north Cyprus pending a comprehensive solution. But Article 3 provides that “nothing in this Protocol shall preclude measures with a view to promoting the economic development of” North Cyprus.

Eastern Mediterranean University believes that Turkish Cypriots have sound legal reasons not to accept the Greek Cypriot administration as legally representing the whole island and the Turkish Cypriot people. We base this on the following three arguments:

- i) The acceptance of the Greek Cypriot Administration as the legal government of the Republic of Cyprus has long been based on the argument of “state of necessity,” referring to the abnormal situation on the Island. An institution cannot claim a state of necessity as the basis for its actions if the institution contributes to the continuation of the abnormal situation. The Greek Cypriot people as well as the Greek Cypriot Administration refused to accept the basic framework for a comprehensive settlement of the Cyprus problem in the April 2004 referendum, and in so doing, they have prevented the establishment of a new state of affairs on the Island and the termination of the abnormal situation. Turkey and the Turkish Cypriots have given their consent for the establishment of a new and internationally acceptable state of affairs. Therefore, this argument can no longer be legitimate grounds for supporting the position taken by the Greek Cypriot Administration that it is the legal government of the whole island with the full authority to represent Turkish Cypriots.
- ii) In the case of a “double yes” from the two sides in the April 2004 referendums, the Foundation Agreement and its annexes would have entered into force and a new state (entailing a new state of affairs) would have been established. Since it has recognized the right of Turkish Cypriots and Greek Cypriots to determine the future state of affairs on the island upon an equal footing, and has accepted the two sides’ separate inherent constitutive powers as confirmed by separate simultaneous referenda, the EU and its organs and institutions are now acting inconsistently by granting Greek Cypriots the privilege to act as the sole legal actor of the current state of affairs. Since the “common will” of Cypriots has been exercised separately, the international community must find ways to avoid the subjugation of the Turkish Cypriot will to the Greek Cypriot will. Therefore, for a European organization to ask a Turkish Cypriot university to submit to the will of the Greek Cypriot government by considering it as the legal government of Cyprus and requiring recognition by one of its organs is entirely contrary to the reality revealed in the referenda held in the north and south of Cyprus on 24 April 2004; it

represents a policy of discrimination against the Turkish Cypriots, and a contradictory denial of the EU's recognition of Turkish Cypriots' rights in its official statements both prior to and since the referenda.

iii) EU institutions have expressed their support for the economic development of Turkish Cypriots and to reduce economic disparities between the two sides in Cyprus in order to facilitate and contribute to an enduring solution. Increasing the economic capacity of the Turkish Cypriots is directly related to promoting the economic development of North Cyprus where this population lives and administers its institutions, as revealed in the wording of Commission and Council decisions.

Thus on 26 April 2004 the Council stated, “The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community... The Council recommended that the 259 million euro already earmarked for the northern part of Cyprus in the event of a settlement now be used for this purpose.” Again, it was stated in 12-13 December 2002 Copenhagen Conclusions that the European Council invited “the Commission [...] to consider ways of promoting economic development of northern part of Cyprus and bringing it closer to the Union”.

Since the Turkish Cypriot universities' activities are vital for the economic life of North Cyprus in addition to trade and tourism, and since this soil is an area in which all EU citizens and goods can freely and legally enter through Turkish Cypriot ports under the provisions of the “Green Line Regulation,” Turkish Cypriot universities should have the right to be accepted into the EU higher educational system, independent of the recognition of the Greek Cypriot authorities, provided that these universities fulfill the objective criteria within that system.

In this context, one objection raised in the 30 August 2005 letter of Lina Kassiandou, concerns entry into Cyprus using the northern ports. She claims that:

“ ...Furthermore, if you have come into Cyprus using the illegal airport in the occupied part of the island you will find difficulties coming back to Cyprus as you have used an illegal port of entry...”

This objection is without substance. Since May 1, the so called “Green Line Regulation” for Cyprus has entered into force in order to facilitate the border crossings of all persons and to facilitate the trade between the areas in which the Government of the Republic of Cyprus does not exercise effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland.

According to the consolidated version of the Green Line Regulation, all citizens of the EU and third country nationals who are legally residing in the northern part of Cyprus can cross the line. Moreover, the consolidated version of the Green Line Regulation provides that the Government of Republic of Cyprus has to set the minimum rules for carrying out the checks on persons at the line in order to enable EU citizens to exercise their rights of free movement within the EU. Under article 2 of title II of the regulation regarding crossing of persons, the Council limited the legal conditions of checks on all persons crossing the line, but with the

aim of combating illegal immigration of third country nationals and to detect and prevent any threat to public security and public policy. In light of these legal points, it is not possible to accuse the German professors involved in the archeological excavation of illegal entry into Cyprus via illegal ports. In compliance with the Council's instructions in the Green Line Regulation, any EU citizens can legally come to the island from airports/harbors located in the north of the island (which is what these professors did), and it is not within the competence of Greek Cypriot authorities to prevent such an entry into Cyprus based on this argument.

## **(2) The legal status of Eastern Mediterranean University**

The Turkish Cypriot administration, representing a population of over 200,000 people, is a functioning, democratically elected government that includes a parliament, an independent judiciary and all other institutions of sovereign territorial administration such as municipalities, public and private health facilities, tax offices, schools and universities.

The EU Commission, in article 1 of its April 2004 "Proposal for a Council Regulation," considers local authorities, cooperatives and representatives of the civil society, business support organisations, public agencies, public administrations, local or traditional communities, associations, foundations, non-profit organisations, non-governmental organizations, which were founded under the laws of TRNC, as beneficiaries of the financial support.

As one of the foundations established in North Cyprus, Eastern Mediterranean University (EMU), the largest and most established university of Cyprus was established in 1979, and over the past twenty-five years has acquired a sound international reputation. In terms of its student population, the modernity of its facilities and the quality and diversity of its programs, its growth and accomplishments have been extraordinary.

Eastern Mediterranean University's work has been recognized in the European context through its acceptance as a full individual member of the [European University Association \(EUA\)](#) since April 2005. The University currently has 37 undergraduate and 35 postgraduate programs; and to date, EMU has graduated some 18,000 students, who are now successfully pursuing careers or graduate studies both at home and abroad. EMU comprises 7 Faculties and 3 Schools, offering 41 four-year Bachelor's, 8 two-year Associate, 24 Master's, and 14 Ph.D. degree programs—all granted official equivalency by the Education Ministries of 8 countries and accepted by many others. EMU has developed frameworks for collaboration and mobility with 84 universities in 30 countries (12 in the EU).

EMU's academic units have additional affiliations—e.g. EMU's Architecture Faculty is a member of EAAE (European Association for Architectural Education) and ENHR (European Network for Housing Research); the Tourism School is an approved Edexcel Center and is TEDQUAL certified; the School of Foreign Languages was the first accredited center in Cyprus for Cambridge (UCLES) teacher training courses; the Electrical and Mechanical Engineering programs have met ABET's substantial equivalency requirements; EMU's Computer Center is the only authorized testing center and Cyprus representative of VUE-Pearson, and is the authorized Regional Cisco Networking Academy. All of our diplomas are recognized through our protocol with Central Connecticut State University; our programs in Engineering have received additional accreditation from the Pakistan Engineering Council; the Department of International Relations has developed a collaboration protocol with the State University of New York (SUNY) at New

Paltz, and the Department of History has developed a protocol with the University of Erfurt, in Germany. The university is moving to develop academic and administrative accreditation under ISO 9001, and each program offered at EMU will work to seek relevant international accreditation in its area.

Work is being done in the Department of Electrical Engineering (which is IEEE-affiliated) with international companies and all universities in North Cyprus to establish a Technopark for hi-tech R&D. In Computer Engineering, cross-language information retrieval research is being developed within the 6th Framework, under the Turkish Informatics Foundation pending EU funding; other projects are underway with American and Russian institutions. There are joint Ph.D. supervisions between EMU's Chemistry Department and the Max Planck Institute; a gene therapy project is in progress with the Natural Sciences and Engineering Council of Canada. Mathematics research is being carried out with the Swedish National Research Council. In the Business & Economics Faculty, staff are involved in projects funded by AMIDEAST, the Canadian Department of Foreign Affairs, UNOPS/CRANET, and the EU Commission. In Communication & Media Studies, World Bank policy papers are being developed and staff are working on bicultural projects with UNOPS/the Pedagogical Institute of Cyprus. The Architecture Faculty is involved in other UNOPS/bicultural/EU projects on the built environment. In Education, staff are involved in the International Council for Health, Physical Education, Recreation, Sports & Dance. In the History Department, research is in progress under the aegis of the European Centre for Minority Issues. For students, many merit- and need-based scholarships have been created at EMU, and other funds are available from external sources. Opportunities for mobility have been created: in Art History, a student scholarship has been set up for the British Institute of Florence; in Tourism, AMADEUS/FIDELIO programs and USEH internships have been developed. The Industrial Engineering Club is the only Cyprus member of ESTIEM (European Students of Industrial Engineering and Management). EMU has been involved since 1992 in AIESEC (Association Internationale des Étudiants en Sciences Économiques et Commerciales). An EMU student group worked to establish AEGEE-Magusa (Association des États Généraux des Étudiants de l'Europe); since 1997, more than 140 European students have been hosted by AEGEE-Magusa, and 35 EMU students have participated.

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Nationally, EMU is committed to its role as a major force for helping in the economic and cultural development of the Turkish Cypriot people, and to striving to move beyond the country's political impasse by extending offers of friendship, partnership, sharing of intellectual resources and mobility to institutions throughout Cyprus. In the north, EMU has signed protocols with 3 other universities and opened its facilities to them. Viewing quality in higher education not simply in terms of teaching and research/development but also as providing service to the community, EMU has this year started several projects to benefit Cyprus as a whole: a Center for Continuing Education that is developing evening classes and Distance Learning/certification programs, a Center for Technology Development & Industrial Relations, and a Center for Endowment Fund & Project Development. EMU's TV and Radio stations are creating educational programs in English, Greek, and Turkish; information is shared in public meetings; and EMU's library facilities are open to the public. EMU does not discriminate on the basis of race, color, national or ethnic status, sex, gender, disability unrelated to job or program requirements, marital status, age, or religious or political beliefs, in its educational, financial or employment policies, programs or activities. The university is helping the country on environmental, political, and cultural levels: the university provides consultancies to government, the municipality, and local businesses/industries; and is developing joint projects through its departments and 21 research centers in many public sector areas: environmental management,

earthquake studies, drainage, traffic, tourism, technological development, cultural heritage preservation, gender equality, and developing a just settlement of the Cyprus issue.

Internationally, because of the multicultural character of its staff and student population and its experience of regional problems and issues—ethnic conflicts, small-island economies, water resources, pollution, energy conservation, solar power—EMU is committed to further diversifying its student and staff population, and to serving both as a bridge between European and other cultures and as a force for change, development and modernization in the region; while helping preserve the natural environment and respecting the needs and values of indigenous/local cultures and traditions. EMU has joint conferences, lectures and visiting appointments with regional universities and is in contact with the Culture Ministries of several regional countries and Greek Cypriot institutions with the aim of creating joint projects—e.g. social sciences databases and think tanks to address issues such as cultural sustainability, the place of religion in society, leadership, gender and minority rights—to transform the idea of a “clash of civilizations” to that of a “consensus of civilizations” that recognizes the contribution of all cultures to the world’s heritage and promotes understanding, tolerance, and peaceful, mutually beneficial coexistence.

Above all, EMU believes it is our mission to inculcate in our students, whatever their origins or affiliations, an informed understanding of principles of democracy and tolerance and a mature sense of responsibility, so that as educated citizens, they can contribute positively to the peaceful coexistence of all peoples and the progress of society in today’s increasingly pluralistic and cosmopolitan world. It is for this reason too, that despite the obstacles and restrictions imposed on North Cyprus by the international community, EMU’s academics are striving with determination as teachers and scholars to battle with events and circumstances that are unfortunately beyond its control, working to contribute to the development of the whole of Cyprus and educate the youth in the importance of these values.

The main obstacle to EMU’s efforts to educate its students, facilitate research and development, and provide service to the community has been the 42 years of isolation and exclusion caused by the non-recognition of North Cyprus; and our staff and students have constantly been struggling to overcome the resulting problems in education and in the community. Despite these efforts, the educational consequences of the international isolation of North Cyprus have been serious: the lack of free movement of students and staff and has constrained and deprived them of academic freedom, exchange of ideas, international competition and intercultural experience; there has been political obstruction of academic cooperation agreements, research and development projects, and funding which would benefit students, staff, the people of Cyprus and the region.

We share a common educational vision and philosophy with our colleagues in Europe: EMU desires scholarly collaboration in research, training, exchange programs, publications, technology development, and culture; and the freedom of movement to pursue these aims. The detrimental psychological effect of isolation and exclusion on staff and students has increased the difficulty of our struggle to mediate between cultures, promote European ideals, and participate in the European knowledge society. It is our hope that with the new understanding that has emerged in Europe since the April 2004 referenda, the removal of impediments to scholarly interchange will facilitate the realization of our shared vision and ideals, and help foster an environment of peace and cooperation in Cyprus.

In this context, EMU offers its full support to work that contributes to the protection and preservation of the cultural heritage of Cyprus. The [Department of Archeology and Art History](#)

offers a joint degree in its two fields, and its work, in collaboration with the Ministry of Antiquities and UNOPS, is concerned with precisely this. The University is supporting the critical work of this department and expects to create a Center of Excellence in this area. Archeology students are being trained to contribute to the archeological work currently in progress at the major Neolithic site of Tatlisu in the Kyrenia mountains, and also the Late Bronze Age site at Kale-burnu/Kraltepe. Department faculty are working with the Ministry of Antiquities as arts and culture advisors, and as advisors in the harmonization of laws on antiquities in North Cyprus with those in the rest of Europe. The department plans to establish a graduate program with specialties in the areas of Mediterranean Archeology, Underwater Archeology, Field Techniques, and Cypriot and Anatolian Archeology. It expects to initiate short-term courses in art history subjects related to Cyprus, such as Lusignan and Venetian art; and to set up an Archeology Field Unit employing professional archeologists attached to the department and contracting work for the Department of Antiquities and private companies.

This department since its inception has experienced specific problems with regard to the political isolation of North Cyprus, as our scholars in the field of archeology continually find themselves obstructed or harassed in their scholarly work at international conferences and other venues. It is our position, as an European institution of higher learning, that such obstruction and harassment runs counter to all principles of academic freedom that necessitates also freedom in research for the purpose of seeking the intellectual truth. We believe that academic freedom is a cherished principle if institutions of higher learning ,embraced by multinational organizations like the United Nations, the European Union and in the United States.

### **(3) The nature and legal status of the archeological work in North Cyprus**

The letter from the members of the Department of History and Archaeology of the University of Cyprus to Dr Martin Bartelheim cites the UNESCO Conventions (1954, 1970, 1972) and states that 'It is illegal to conduct excavations or any other archeological fieldwork in the occupied territory of the ROC.'

UNESCO conventions, at a practical level, are concerned with the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage. As indicated in article 5 of the Convention concerning the Protection of the World Cultural and Natural Heritage ( 1972), the convention aims to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs.

Article 6 of this Convention states that:

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is, situated; and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is duty of the international community as a whole to co-operate.

The excavation areas subject to this case are forming part of the cultural and natural heritage in North Cyprus, and they are threatened by serious and specific danger, the threat of disappearance caused by accelerated deterioration.

This is therefore not an issue of sovereignty or political recognition, but an issue of professional, ethical commitment to the preservation and protection of cultural heritage. As European citizens and members of the European community, it is the legal and moral responsibility of the Turkish Cypriot people to act in accordance with the Convention and to protect and preserve a site which is part not only of the local and natural, but also the European and world cultural heritage.

Moreover and the most important, the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict the Hague (26 March 1999) gives permission for urgent actions to save the cultural and natural heritage. Article 9 of the Protocol, concerning Protection of cultural property in occupied territory, states that:

1. Without prejudice to the provisions of Articles 4 and 5 of the Convention, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory:  
.....

- b. any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property;

Based on the statements of Martin Bartheilm in his letter to Lina Kassianidou of the University of Cyprus, there was an imminent threat against archeological structures at the Kaleburnu-Kraltepe / Galinoporni-Vasili site in the Karpaz Peninsula. There was a need for a rapid rescue operation since the archaeological structures are visible on the surface and are being eroded. This progressing devastation of a site which is part of the cultural and natural heritage has necessitated an immediate action for its protection.

For this reason, EMU and the Department of Antiquities and Museums in Famagusta (the local authority) applied to Dr.Martin Barthelheim and Prof. Ernst Pernicka to ask their assistance in conduct archeological work in line with UNESCO regulations. All compulsory permissions have been obtained from the local authority, the Department of Antiquities and Museums in Famagusta.

We completely reject the argument that North Cyprus is “invaded/occupied territory,” since the current situation on the island is the direct result of an armed conflict; however, even if that argument were acceptable, Article 9 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict the Hague, would apply to this case and provide sound legal ground for Dr. Müller and his colleagues’ archeological work

Legally, there is no doubt that the priority of UNESCO is not to find a solution for political impasses such as that in Cyprus. The issue here is whether it is possible to protect archeological structures by implementing methods and using the highest technology, in line with UNESCO standards.

Every effort must be made to save the archaeological structures at this site as soon as possible. This is why EMU started excavations in cooperation with its partners from Europe. EMU and the Department of Antiquities and Museums in Famagusta are quite aware of the fact that they need further assistance to safely carry out this project in line with UNESCO regulations; and it would be irresponsible from a scholarly and professional viewpoint, as well as counter to the spirit of the UNESCO principles to suspend the project until a just settlement is reached on the island. Given that the Cyprus problem has not been solved for more than 30 years, it will be too late to save the cultural and natural heritage when both sides reach an agreement. We presume that the University of Cyprus would like the Kaleburnu-Kraltepe / Galinoporni-Vasili preserved, but solely under Greek Cypriot auspices and command. This petty, hard-hearted approach is akin to watching a house burn while one fire company tells another it does not have permission to spray its water.

With regard to statutes of the Department of Antiquities and Museums in Famagusta (the local authority), one must look at the guiding principles of the 1960 Constitution that provides for political equality between the two communities. The constitution contains many checks and balances to maintain the political equality of the two communities. The system of the 1960 Constitution was based on the shared executive power of the Greek and Turkish Cypriot communities; and as a matter of fact under this system, the separate communal chambers have competence to exercise their executive power separately in matters related to religious affairs and cultural and educational issues ( Article 87, Constitution of ROC, 1960).

The legal interpretation of the spirit of the Constitution cannot change even if we assume that the natural and cultural heritage is one of the common and fundamental matters of state such as defence, foreign policy, or taxation, and should be governed under the organs of the public service. In addition it is not possible to claim that the sole authority to issue permission for excavations or similar archaeological work is the Department of Antiquities and Museums of the Greek Cypriot administration: “As to the 1960 Constitution, the public service shall be composed as to seventy per cent of Greek Cypriots and as to thirty per cent of Turkish Cypriots. Any decisions taken by the agency in the Greek Cypriot community is not legally binding without participation of the Turkish Cypriots up to 30 per cent into the public service.” (Article 123, Constitution of ROC, 1960).

Since the 2004 referendum, the Greek Cypriot administration’s arguments based on the doctrine of state of necessity does not constitute a legal or ethical ground or justification for disregarding the participatory rights of Turkish Cypriots. The Turkish Cypriot people have no other alternative but to exercise their right of self-determination, the numerical superiority of Greek Cypriots notwithstanding, as a politically equal partner of the Republic of Cyprus.

#### **(4) Scholarly and professional ethics**

The excavation in the Karpaz Peninsula is an educational matter for scholars and students of the Archaeology and Art History Department of EMU. Since North Cyprus is non-recognized, on the level of higher education this social, cultural, and academic exclusion of students and scholars continues to prevent their free movement, and deprive them of academic freedom, exchange of ideas, international competition and intercultural experience; there has also been frequent political obstruction of academic cooperation agreements, research and development projects, and funding which would benefit the people of Cyprus, and the region.

Eastern Mediterranean University's intentions are honest and honorable: it desires scholarly collaboration with its international counterparts in the sciences, arts, research, training, exchange programs, publications, technology development, culture and sports, and the freedom of movement to pursue these aims. EMU is calling upon the international community to cooperate with EMU in order to provide future generations with a forward-looking, peaceful, and prosperous environment that is free of intolerance.

Were the arguments of the University of Cyprus to be abided and enforced virtually all activity in North Cyprus that possesses even the slightest veneer of Turkish Cypriots exercising authority over their own affairs would have to cease. This would be, at a minimum, vengeful and punitive and would choke off what little economy and autonomy exists in North Cyprus. The net effect would be to force the Turkish Cypriots, under great duress, to appeal for whatever meager dispensation the Greek Cypriot Administration is willing to provide. As the University of Cyprus' letter shows, that dispensation is likely to be nominal.

The removal of all impediments to scholarly interchange will without a doubt contribute to the realization of our shared vision and ideals, and to fostering an environment of peace and cooperation in Cyprus.

## Appendix I

### UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage( 1972)

#### **Article 4**

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

#### **Article 6**

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is, situated; and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is duty of the international community as a whole to co-operate.

#### **Article 11**

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of List of World Heritage in Danger, a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

#### **Article 13**

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property

requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

**Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict the Hague, 26 March 1999**

**Article 9      Protection of cultural property in occupied territory**

1. Without prejudice to the provisions of Articles 4 and 5 of the Convention, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory:

- a. any illicit export, other removal or transfer of ownership of cultural property;
- b. any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property;
- c. any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

2. Any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory.

## Appendix II

### The Constitution of the Republic of Cyprus, 1960

#### Part 5 The Communal Chambers

##### **Article 86**

The Greek and the Turkish Communities respectively shall elect from amongst their own members a Communal Chamber which shall have the competence expressly reserved for it under the provisions of this Constitution.

##### **Article 87**

1. The Communal Chambers shall, in relation to their respective Community, have competence to exercise within the limits of this Constitution and subject to paragraph 3 of this Article, legislative power solely with regard to the following matters: -

- (a) all religious matters;
- (b) all educational, cultural and teaching matters;
- (c) personal status;
- (d) the composition and instances of courts dealing with civil disputes relating to personal status and to religious matters;
- (e) in matters where the interests and institutions are of purely communal nature such as charitable and sporting foundations, bodies and associations created for the purpose of promoting the well-being of their respective Community;
- (f) imposition of personal taxes and fees on members of their respective Community in order to provide for their respective needs and for the needs of bodies and institutions under their control as in Article 88 provided;
- (g) in matters where subsidiary legislation in the form of regulations or bye-laws within the framework of the laws relating to municipalities will be necessary to enable a Communal Chamber to promote the aims pursued by municipalities composed solely of members of its respective Community;
- (h) in matters relating to the exercise of the authority of control of producers' and consumers' co-operatives and credit establishments and of supervision in their functions of municipalities consisting solely of their respective Community, vested in them by this Constitution:

Provided that –

- (i) any communal law, regulation, bye-law or decision made or taken by a Communal Chamber under this sub-paragraph (h) shall directly or indirectly be contrary to or inconsistent with any by which producers' and consumers' co-operatives and credit establishments are governed or to which the municipalities subject,
- (ii) nothing in paragraph (i) of this proviso contained shall be construed as enabling the House of Representatives to legislate on any matter relating to the exercise of the authority vested in Communal Chamber under this sub-paragraph (h);
- (i) in such other matters as are expressly provided by this Constitution.

2. Nothing in sub-paragraph (f) of paragraph 1 of this Article contained shall be construed as in any way curtailing the power of the House of Representatives to impose, in accordance with the provisions of this Constitution, any personal taxes.
3. Any law or decision of a Communal Chamber made or taken in exercise of the power vested in it under paragraph 1 of this Article shall not in any way contain anything contrary to the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or which is against the fundamental rights and liberties guaranteed by this Constitution to any person.

**Article 123**

1. The public service shall be composed as to seventy per centum of Greeks and as to thirty per centum of Turks.
2. This quantitative distribution shall be applied, so far as this will be practically possible, in all grades of the hierarchy in the public service.
3. In regions or localities where one of the two Communities is in a majority approaching one hundred per centum the public officers posted for, or entrusted with, duty in such regions or localities shall belong to that Community.

**Article 124**

1. There shall be a Public Service Commission consisting of a Chairman and nine other members appointed jointly by the President and the Vice-President of the Republic.
2. Seven members of the Commission shall be Greeks and three members shall be Turks.
3. Each member of the Commission shall be appointed for a period of six years, but he may at any time resign his office by writing under his hand addressed to the President and the Vice-President of the Republic.....