

Brexit, the Republic of Cyprus and the Sovereign Base Areas

An Open Letter addressed to the President of the Republic of Cyprus and the President of the European Commission

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A map of the Island of Cyprus, which highlights the Akrotiri Sovereign Base Area ('Akrotiri SBA'), the Dhekelia Sovereign Base Area ('Dhekelia SBA'), a number of British Retained Sites dotted around the Republic of Cyprus and the United Nations Buffer Zone also known as 'the Green Line'

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Open Letter

Date: 2 April 2019

Dear President Anastasiades and President Juncker

Re: Brexit, the Republic of Cyprus and the Sovereign Base Areas

I am writing at a precarious moment in history. Under the relevant law as it currently stands,¹ at 11pm Greenwich Mean Time ('GMT') on 12 April 2019, the United Kingdom ('the UK') will exit the European Union ('the EU') in a no-deal scenario, i.e. 'without a Withdrawal Agreement and framework for a future relationship in place between the UK and the EU'.² As pointed out on 1 April 2019 by Stephen Barclay MP, the British Cabinet minister who serves as Secretary of State for Exiting the EU, '... the default legal position is that the UK will leave the EU in just 11 days' time.'³ This will remain the 'position', unless the law changes before 11pm GMT on 12 April 2019.

Accordingly, in my capacity as a citizen of the UK who now works as an academic in the RoC, I have composed this Open Letter to highlight various matters, to underline certain concerns and to invite you to answer a number of questions. These primarily relate to the potentially disastrous, otherwise disruptive and arguably unlawful consequences of any no-deal Brexit upon the Republic of Cyprus ('the RoC') and the Sovereign Base Areas of Akrotiri and Dhekelia ('the SBAs') in the Island of Cyprus ('the Island').

My previous Open Letter of 21 January 2019

On 21 January 2019, Agora Dialogue published a Brexit-related Open Letter of mine addressed to the President of the European Commission, the President of the RoC, the Prime Minister of the UK and the Administrator of the SBAs

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¹ Under EU Law, the relevant legal framework consists of *inter alia* Article 50 of the Treaty on European Union, as applied by the Conclusions of the European Council reached on 21 March 2019. See 'European Council (Art. 50) conclusions, 21 March 2019', website of the European Council, at

www.consilium.europa.eu/en/press/press-releases/2019/03/21/european-council-art-50-conclusions-21-march-2019/. Under the domestic law of the United Kingdom, the relevant legal framework consists of *inter alia* section 1 and section 20 of the European Union (Withdrawal) Act 2018, as the latter has been amended by Regulation 2 of the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019.

² 'UK government's preparations for a 'no deal scenario', as updated on 21 December 2018 and as published by the Department for Exiting the EU on the website of the Government of the UK, at www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario/uk-governments-preparations-for-a-no-deal-scenario

³ Hansard, *House of Commons Debates*, 1 April 2019, Column 879, website of the Parliament of the UK, at [https://hansard.parliament.uk/commons/2019-04-01/debates/A95D849C-AB26-4DCF-9A35-CF7A02DAE11F/EUWithdrawalAndFutureRelationship\(Votes\)](https://hansard.parliament.uk/commons/2019-04-01/debates/A95D849C-AB26-4DCF-9A35-CF7A02DAE11F/EUWithdrawalAndFutureRelationship(Votes))

(‘my previous Open Letter’).⁴ By means of a courteous if all too short one-page letter, dated 1 March 2019, for which I am grateful, I eventually received a reply from the High Commissioner of the UK in Nicosia – on behalf of the Prime Minister of the UK, the Commander of British Forces Cyprus (i.e. the Administrator of the SBAs in his military guise) and himself.

By contrast, I have not received the courtesy of any reply from either of you in response to my previous Open Letter, which I sent to you on 21 January 2019, i.e. on the date of its publication. Moreover, other than a few perfunctory acknowledgments of receipt, I have not received any substantive reply from various other recipients of my Open Letter. Among others, these include the members of the team of President Juncker, his Vice-President, the Minister of Finance of the RoC, the Minister of Foreign Affairs of the RoC, the High Commissioner of the RoC in London and the Government Spokesman of the RoC (‘the Government Spokesman’). On 21 or 22 January 2019, I sent each of these a copy of my previous Open Letter.

To top it all, I have not received a reply from the Government Spokesman in response to my email to him of 30 January 2019. In that email, I referred to his short statement of 28 January 2019, wherein he disclosed the existence of ‘a general strategic plan’ to do with Brexit.⁵ Coincidentally, or otherwise, this disclosure followed a Brexit-related article of mine, which a prominent Cypriot Sunday newspaper had published a day earlier. In my article, I summarised the themes of my previous Open Letter.⁶ With that in mind, in my email to the Government Spokesman of 30 January 2019, I asked him to confirm whether the Brexit-related ‘general strategic plan’ had been published and, if not, to clarify when it would be published.

In my said email to the Government Spokesman, I pointed out that on 19 December 2018, the Government of Ireland published a 139-page *No-Deal Brexit Contingency Action Plan*.⁷ This publication is pertinent because Ireland

⁴ Klearchos A. Kyriakides, ‘The impact of any no-deal Brexit upon the Republic of Cyprus and the Sovereign Base Areas in the Island of Cyprus: An Open Letter addressed to the President of the European Commission, the President of the Republic of Cyprus, the Prime Minister of the United Kingdom and the Administrator of the Sovereign Base Areas’, website of Agora Dialogue, 21 January 2019, at <https://agora-dialogue.com/wp-content/uploads/2019/01/KK-Open-Letter-on-a-no-deal-Brexit-as-at-21.01.2019-at-1445-KK-Full-version-2.pdf>

⁵ ‘Δηλώσεις του Κυβερνητικού Εκπροσώπου για το Brexit’ (i.e. ‘Statements of the Government Spokesman on Brexit’), announcement published on 28 January 2019 on the website of the Press and Information Office of the Government of the Republic of Cyprus, at www.pio.gov.cy/ανακοινωθεντα-αρθρο.html?id=5779#flat

⁶ Κλέαρχος Α. Κυριακίδης, «Η επίδραση οποιουδήποτε «άτακτου Brexit» στην Κύπρο», *Σημερινή της Κυριακής*, 27 Ιανουάριος 2019, www.sigmalive.com/simerini/analiseis/551537/i-epidراسi-opoioudipote-ataktou-brexit-stin-kypro

⁷ *Preparing for the withdrawal of the United Kingdom from the European Union on 29 March 2019: Contingency Action Plan* (Government of Ireland, December 2018), website of the Irish Government News Service, at https://merrionstreet.ie/MerrionStreet/en/NewsRoom/Releases/No_Deal_Brexit_Contingency_Plan.pdf

is one of only three member states of the EU to share a border or boundary with territory over which the UK asserts sovereignty; the other two are Spain and the RoC. Consequently, various questions arise.

Has the Government of the RoC published the 'general strategic plan' mentioned by the Government Spokesman on 28 January 2019?

Furthermore, has the Government of the RoC published any equivalent of the Irish *No-Deal Brexit Contingency Action Plan*? If so, will you please provide me with copies or specify the hyperlinks wherein such texts have been published online? If not, will you kindly explain why no such plans have been published? If any such plans have been prepared but not published, will you please arrange for publication to take place forthwith?

I ask these questions in view of the aforementioned pattern of non-responses from senior public servants in Brussels and Nicosia. This pattern has reinforced at least two of the concerns expressed in my previous Open Letter. One is that the European Commission and the Government of the RoC have not been sufficiently transparent as to how Brexit, particularly any no-deal Brexit, may affect the RoC and the SBAs. Another is that the said Commission and Government do not appear to have taken adequate, transparent and well-publicised steps to prepare the public and private sectors of the RoC for any form of Brexit, especially any no-deal Brexit.

Since the publication of my previous Open Letter on 21 January 2019, various developments have exacerbated my concerns, particularly as regards the lack of transparency. It suffices if I cite two pieces of evidence.

The first is the official film of the press conference held on 18 February 2019 by Margaritis Schinas, the Chief Spokesperson of the European Commission ('the Chief Spokesperson'). For some reason, the Chief Spokesperson refused to answer two evidently fair questions – as to how any no-deal Brexit would affect the SBAs and as to whether any SBA-related no-deal contingency plan exists. Other than commend the EU-UK Withdrawal Agreement, the Chief Spokesperson clammed up. This is what he said:

'... I don't have anything else to say. I will not speculate on any aspect of a no-deal plan other than say that we will continue with our contingency plan and I am happy to check whether Céline Gauer [Deputy Secretary-General of the Commission] has gone to Cyprus. ... Concerning Cyprus, I reiterate that I have nothing else to say and I will

not speculate on any aspects that pertain to a no-deal and how this would impact a very specific situation in the island.’⁸

The second piece of evidence is a message published on 21 March 2019 by the Foreign Ministry of the RoC on its official Twitter account. In this, the Foreign Ministry confirmed that the Foreign Minister of the RoC was discussing Brexit at a meeting convened by the Foreign Affairs Committee of the House of Representatives in Nicosia. At the same time, the Foreign Ministry disclosed that the Minister was speaking at a session held «κεκλεισμένων των θυρών», i.e. ‘behind closed doors’.⁹ The message offered no additional details as to what the Foreign Minister was actually discussing or why he was ‘behind closed doors’. Moreover, the message was not accompanied by any transcript published on the official Twitter account¹⁰ or website of the Foreign Ministry of the RoC.¹¹

These two pieces of evidence point to the existence of a Brexit-related wall of silence, which is undemocratic, unreasonable, unfair and otherwise unjustified. Accordingly, in the interests of transparency and other democratic values, will you please account for this silence and will you belatedly address the concerns I expressed in my previous Open Letter? At the same time, will you kindly answer the questions I posed therein, particularly those in Appendix 1 under the headings entitled ‘Proposition 1’ to ‘Proposition 5’?

That being said, I thank the Government of the RoC for taking certain steps to address the concerns I expressed in my Open Letter with regard to the post-no-deal Brexit rights of citizens of the UK who live in the RoC, of whom I am one.¹² I also thank the SBA Administration for what it did in mid-March 2019.

⁸ Video entitled ‘BREXIT - Cyprus / latest: - Q&A Type: News Reference: I-168237 Date: 18/02/2019 Duration: 04:14 Personalities: Schinas, Margaritis’, website of the European Union, at <https://ec.europa.eu/avservices/video/player.cfm?ref=1168237>

⁹ Message posted on 21 March 2019 on the official Twitter account of the Ministry of Foreign Affairs of the RoC, at <https://twitter.com/CyprusMFA/status/1108683520657014784> and at <https://twitter.com/cyprusmfa?lang=en>

¹⁰ See the messages posted by the Foreign Ministry of the RoC on and shortly after 21 March 2019 at <https://twitter.com/CyprusMFA>

¹¹ See ‘ΤΕΛΕΥΤΑΙΑ ΝΕΑ’, i.e. ‘LATEST NEWS’ on the Greek language part of the website of the Foreign Ministry of the RoC, at www.mfa.gov.cy/mfa/mfa2016.nsf/index_gr/index_gr?OpenDocument and ‘LATEST NEWS’ on the English language part of the same website, at www.mfa.gov.cy/mfa/mfa2016.nsf/index_en/index_en?OpenDocument

¹² See, for example, ‘Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community: RESIDENCE RIGHTS AND RESIDENCE DOCUMENTS IN THE REPUBLIC OF CYPRUS IN A ‘NO-DEAL’ SCENARIO’, message ostensibly updated on 7 March 2019, website of the Civil Registry and Migration Department of the Ministry of the Interior of the Government of the RoC, at [www.moi.gov.cy/moi/crmd/crmd.nsf/All/C482CD407E0903D8C225830E00384072/\\$file/BREXIT%20NO%20DEAL%20SCENARIO%20ANNOUNCEMENT.pdf](http://www.moi.gov.cy/moi/crmd/crmd.nsf/All/C482CD407E0903D8C225830E00384072/$file/BREXIT%20NO%20DEAL%20SCENARIO%20ANNOUNCEMENT.pdf) Also see the other information and attachments at www.moi.gov.cy/moi/crmd/crmd.nsf/All/C482CD407E0903D8C225830E00384072

It belatedly created a designated page on its website dedicated to Brexit.¹³ At approximately the same time, the SBA Administration also published a no-deal Brexit guidance document.¹⁴ Welcome though these new sources of information are, they focus on how Brexit may affect British Forces Cyprus and the SBA Administration. They shed little or no light on the other matters pinpointed in my previous Open Letter or in this Open Letter.

My Written Evidence of 22 February 2019

On 22 February 2019, I submitted Written Evidence to the House of Commons Exiting the European Union Committee ('my Written Evidence'). This has been published on the website of the Parliament of the UK.¹⁵ Therein, I raised a series of fresh concerns and I posed a list of additional questions.¹⁶ Several of these are covered by the contents of this Open Letter. The main exceptions include the questions set out in the first part of paragraph 51 and in the first part of paragraph 52 of my Written Evidence, which I hereby reproduce and invite you to address:

'52. Is the Brexit process, as it relates to the RoC and SBAs, already subject to any unpublished agreements, arrangements, understandings, undertakings, protocols or other deals, which have made in secret or in the absence of any transparent or otherwise fair consultation exercises? ...

'53. As the future unfolds, will the prospect of any no-deal Brexit necessitate the negotiation or the conclusion of any secret or published 'side-deals' to address the situation in the SBAs and along its boundaries? If so, when will any such 'side-deals' be concluded ... ?'

¹³ 'EU Brexit', website of the SBA Administration at <https://sbaadministration.org/index.php/eu-brexit>

¹⁴ 'Brexit for BFC [British Forces Cyprus] and SBAA [Sovereign Base Areas Administration]', March 2019, published on 14 March 2019 on the website of the SBA Administration, at https://sbaadministration.org/images/brexit/20190314_Brexit_BFC_final.pdf Also see the message posted on 14 March 2019 on the official Twitter account of British Forces Cyprus at <https://twitter.com/bfcyprus/status/1106115829949743104> and at <https://twitter.com/bfcyprus>

¹⁵ Klearchos A. Kyriakides, 'Written evidence submitted by Dr. Klearchos A. Kyriakides (NEG0033)', 22 February 2019, website of the Parliament of the UK, at data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-progress-of-the-uks-negotiations-on-eu-withdrawal/written/97082.html and the website of the Exiting the European Union Committee, at www.parliament.uk/business/committees/committees-a-z/commons-select/exiting-the-european-union-committee/inquiries/parliament-2017/progress-uk-negotiations-eu-withdrawal-17-19/publications/

¹⁶ In view of developments since I submitted my Written Evidence on 22 February 2019, I have submitted Additional Written Evidence, dated 22 March 2019, to the Exiting the European Union Committee.

‘[T]he prospect of a disastrous no-deal Brexit’¹⁷

In a ‘meaningful vote’ conducted in the House of Commons of the UK on 15 January 2019¹⁸ and in a subsequent ‘meaningful vote’ conducted on 12 March 2019,¹⁹ an emphatic majority of MPs voted against the EU-UK Withdrawal Agreement, as published on 25 November 2018²⁰ and as laid before the Parliament of the UK on 26 November 2018.²¹ It follows that on each occasion, the House of Commons voted against one of the texts in the Agreement, namely the 30-page Protocol on the SBAs of the United Kingdom of Great Britain and Northern Ireland in Cyprus (‘the SBA Protocol’).²² On the same dates, MPs also voted against the Political Declaration, as published²³ and as laid before Parliament on the same days as the Withdrawal Agreement.²⁴ Against this background, on 25 March 2019, the European Commission revealed: ‘As it is increasingly likely that the United Kingdom will

¹⁷ Jeremy Corbyn MP, Leader of HM Opposition, Hansard, *House of Commons Debates*, 25 March 2019, Column 25, at <https://hansard.parliament.uk/commons/2019-03-25/debates/B3FC9D3E-A871-4C19-8629-F11424DA4056/EuropeanCouncil>

¹⁸ Hansard, *House of Commons Debates*, 15 January 2019, Columns 1122-1125, website of the Parliament of the UK, at [https://hansard.parliament.uk/commons/2019-01-15/debates/2504FA7B-45BE-423D-8971-E451EF0594A9/EuropeanUnion\(Withdrawal\)Act](https://hansard.parliament.uk/commons/2019-01-15/debates/2504FA7B-45BE-423D-8971-E451EF0594A9/EuropeanUnion(Withdrawal)Act)

¹⁹ Hansard, *House of Commons Debates*, 12 March 2019, Column 290, website of the Parliament of the UK, at <https://hansard.parliament.uk/commons/2019-03-12>

²⁰ ‘Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018’, as published by the Government of the United Kingdom on 25 November 2018, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

²¹ HM Government, *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community Presented to Parliament pursuant to Section 13 of the European Union (Withdrawal) Act 2018* (Her Majesty’s Stationery Office, November 2018), website of the Government of the UK, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759053/26_November_-_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

²² The SBA Protocol appears at pages 475 to 494 of the Withdrawal Agreement, as laid before Parliament, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759053/26_November_-_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

²³ ‘Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom’, as published by the Government of the UK on 25 November 2018, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759021/25_November_Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom_.pdf

²⁴ HM Government, *Statement that political agreement has been reached Presented to Parliament pursuant to Section 13 of the European Union (Withdrawal) Act 2018* (Her Majesty’s Stationery Office, November 2018), website of the Government of the UK, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759052/26_November_-_Statement_that_Political_Agreement_has_been_reached_.PDF

leave the European Union without a deal on 12 April, the European Commission has today completed its “no-deal” preparations.²⁵

In the light of this disclosure, will President Juncker please clarify how the ‘preparations’ of the European Commission affect the RoC and SBAs? Furthermore, will President Anastasiades please confirm whether each of the three branches of government in the RoC – i.e. the executive, the legislative and the judicial branches – has completed its own preparations for Brexit, especially any no-deal Brexit? If any preparations have not been completed, will President Anastasiades kindly explain which ones have not been completed, why they have not been completed and when he expects that they will be completed?

The importance of these questions has magnified because of what also occurred on 25 March and what followed on 27, 29 and 30 March 2019.

On 25 March 2019, shortly after the House of Commons again voted to reject the aforementioned EU-UK Withdrawal Agreement, Jeremy Corbyn MP, the Leader of the Opposition, responded with the following warning: ‘we still face the prospect of a disastrous no-deal Brexit.’²⁶

On 27 March 2019, Reuters published a report, which revealed the following:

‘With no deal, the SBAs, which comprise three percent of Cyprus’s land mass and are a farming breadbasket, could be thrown into legal limbo. Trade is an EU competency, which means any arrangement cannot be hammered out bilaterally between Nicosia and London. Cypriot residents say they are in the dark. “Of course it’s a concern but unfortunately nobody has informed us about anything,” said Christos Misos, a farmer who helps run a family business in the community of Xylophagou, famed for its red-soil potatoes, a prized Cypriot export. “Will we need to pay customs duties for our products to go to Europe? What will happen to us? We want someone to tell us - if they know - because things look really fluid.” ...’²⁷

²⁵ ‘European Commission - Press release Brexit preparedness: EU completes preparations for possible “no-deal” scenario on 12 April, Brussels, 25 March 2019’, website of the European Commission, at [europa.eu/rapid/press-release_IP-19-1813_en.htm](https://ec.europa.eu/rapid/press-release_IP-19-1813_en.htm)

²⁶ Hansard, *House of Commons Debates*, 25 March 2019, Column 25, at <https://hansard.parliament.uk/commons/2019-03-25/debates/B3FC9D3E-A871-4C19-8629-F11424DA4056/EuropeanCouncil>

²⁷ Michele Kampas, ‘Cyprus Backstop? Ireland is not the only island with Brexit muddle,’ Reuters, 27 March 2019, at www.reuters.com/article/us-britain-eu-cyprus/cyprus-backstop-ireland-is-not-the-only-island-with-brexite-muddle-idUSKCN1R81FK

According to the same Reuters report and ostensibly in the context of the SBAs, the Government Spokesman in Nicosia has made the following confession: 'If Britain leaves the EU without a deal we will be obliged to have customs checks for the trade of goods ...'.²⁸ This reported confession tallies with the concerns expressed in my previous Open Letter.²⁹ As do the other contents of the Reuters report of 27 March 2019.

On 29 March 2019, the House of Commons voted for a third time against the EU-UK Withdrawal Agreement.³⁰ A few minutes after the vote, Theresa May MP, the Prime Minister of the UK, issued the following parliamentary statement, which graphically laid bare the gravity of the situation confronting the UK, its SBAs, the RoC and the other members of the EU:

'The implications of the House's decision are grave. The legal default now is that the United Kingdom is due to leave the European Union on 12 April [2019] That is not enough time to agree, legislate for and ratify a deal. Yet the House has been clear that it will not permit leaving without a deal, so we will have to agree an alternative way forward. The European Union has been clear that any further extension will need to have a clear purpose and will need to be agreed unanimously by the Heads of State of the other 27 member states ahead of 12 April.'³¹

In other words, to quote the advice given on 29 March 2019 by Geoffrey Cox QC MP, the Attorney General of England and Wales, 'any longer extension ... will be subject to the veto of any of the 27 [i.e. the other 27 member states of the EU, otherwise known as the 'EU 27'] ...'.³²

In the aftermath of the vote in Westminster on 29 March 2019, the European Commission weighed in with its own warning: 'A "no-deal" scenario on 12 April is now a likely scenario. ... Sectoral mini-deals are not an option.'³³ One day later, on 30 March 2019, the BBC published a report by Katya Adler, its well-connected Europe Editor. She wrote: 'EU leaders used to use the threat of a no-deal Brexit as a negotiating tactic (as did the UK). They now believe it to be

²⁸ *Ibid.*

²⁹ Kyriakides, 'The impact of any no-deal Brexit upon the Republic of Cyprus and the Sovereign Base Areas in the Island of Cyprus', page 4 and 'Proposition 2' in Appendix 1 from page 14 until page 20.

³⁰ Hansard, *House of Commons Debates*, 29 March 2019, Columns, Columns 771-775, website of the Parliament of the UK, at <https://hansard.parliament.uk/commons/2019-03-29/debates/1EB3876B-BE27-4EBB-9FB5-EEAC71BA8BCE/UnitedKingdom%E2%80%99SWithdrawalFromTheEuropeanUnion>

³¹ *Ibid.*, Column 775

³² *Ibid.*, Column 699.

³³ 'Statement by the European Commission on the vote on the Withdrawal Agreement in the House of Commons Brussels, 29 March 2019', Statement/19/1914, website of the European Commission, at europa.eu/rapid/press-release_STATEMENT-19-1914_en.htm

a very real prospect. That has led to a number of countries – notably France – questioning the logic of delaying Brexit for much longer.’³⁴

It follows that the RoC could find itself confronting multi-dimensional forms of upheaval if, for any reason, the UK exits the EU in disorderly no-deal circumstances on 12 April 2019 or at any later date. As I pointed out in my previous Open Letter and in my Written Evidence, any disruption could be particularly severe if a no-deal Brexit leads to *inter alia* the abrupt exit of the SBAs from the Customs Territory of the EU and the sudden metamorphosis of the hitherto ‘soft’ boundaries of the SBAs into ‘borders’ which are ‘hard’.

What is your response to these matters? In the event of any no-deal Brexit, what exactly will happen to the SBAs, to their boundaries, to the farmers who farm within these boundaries and to all those who live, work or conduct business within these boundaries? Will a no-deal Brexit result in any new forms of direct or indirect discrimination to the detriment of the citizens or other lawful residents of the RoC who do not live or work within the SBAs?

Upon any no-deal Brexit, what will happen to the motorways and other roads of the RoC, which cross into and out of the SBAs? Will the EU or the RoC introduce controls, checks or any other measures on these roads or on any other parts of the boundaries of the SBAs? Will the EU or the RoC impose any customs duties, value added tax or any other taxes with respect to the animals, meat, vegetables, other farm produce, goods or other items that exit the SBAs into the RoC? If so, what will be the legal basis of any new measures introduced in the event of any no-deal Brexit? What will be the post-no-deal-Brexit relationship between the SBAs and the Common Agricultural Policy, other Policies of the EU and EU Law?

Please address these questions, in addition to the others in this Open Letter.

Is a no-deal Brexit incompatible with the Treaty of Guarantee?

I reiterate that any no-deal Brexit could result in the metamorphosis of the hitherto ‘soft’ boundaries of the SBAs into ‘borders’ which are ‘hard’. No less seriously, any no-deal Brexit could result in the enhanced attachment of the SBAs to the UK (i.e. union) or in the enhanced detachment of the SBAs from the RoC (i.e. partition) or both. In my submission, any of these outcomes would be fundamentally incompatible with Article II if not Article I of the Treaty of Guarantee signed in Nicosia on 16 August 1960. For example, under the second paragraph of Article II, the UK – in tandem with Greece and Turkey –

³⁴ Katya Adler, ‘Brexit: EU leaders plan for no deal as other options dissolve’, BBC News Online, 30 March 2019, at www.bbc.com/news/world-europe-47756377

has undertaken to ‘prohibit ... any activity aimed at promoting, directly or indirectly, either union of Cyprus with any other State or partition of the Island.’³⁵ It is significant that this undertaking is not limited to the RoC but to the Island as a whole wherein the SBAs are situated. With these realities in mind, I reproduce below the warning set out in my previous Open Letter:

‘[I]f any no-deal Brexit procures any breach of the prohibition against partition in Article I or Article II of the Treaty of Guarantee, this could conceivably give Turkey, which has itself been in systematic breach of the Treaty, a new pretext to invoke it and to take military action in purported exercise of its morally if not legally dubious ‘right to take action’ under Article IV of the Treaty. The contents of the previous sentence may come across as far-fetched. However, I have composed that sentence with history in mind.

‘Turkey has a proven track record of exploiting pretexts, invoking the Treaty of Guarantee and abusing its power in order to achieve improper ends in the RoC. ...’³⁶

Do you agree that any metamorphosis of the ‘boundaries’ of the SBAs into ‘borders’ would constitute an ‘activity’ which would ‘directly or indirectly’ promote yet another unlawful ‘partition’ of the Island? If so, which steps have the European Commission and the Government of the RoC taken (i) to prevent any breach of the Treaty of Guarantee, (ii) to warn other members of the EU-27 plus the UK that any no-deal Brexit would be incompatible with the Treaty and (iii) to enhance the defence of the RoC? If not, why not?

The Advisory Opinion of the International Court of Justice

Before ending this Open Letter, it would be remiss of me not to point to the landmark Advisory Opinion handed down by the International Court of Justice in The Hague on 25 February 2019.³⁷ Although this relates to what the Court deemed to be the UK’s unlawful detachment of the Chagos Archipelago from Mauritius in 1965, the Advisory Opinion has unmistakable implications for the

³⁵ *United Kingdom of Great Britain and Northern Ireland, Greece and Turkey and Cyprus[:] Treaty of Guarantee. Signed at Nicosia, on 16 August 1960. Official texts: English and French. Registered by the United Kingdom of Great Britain and Northern [at the United Nations] on 12 December 1960, website of the United Nations, at https://peacemaker.un.org/sites/peacemaker.un.org/files/CY%20GR%20TR_600816_Treaty%20of%20Guarantee.pdf*

³⁶ Kyriakides, ‘The impact of any no-deal Brexit upon the Republic of Cyprus and the Sovereign Base Areas in the Island of Cyprus’, page 20.

³⁷ *Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965*, dated 25 March 2019, as amended on 4 March 2019, website of the International Court of Justice, at www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf

arguably unlawful detachment of the SBAs from the RoC in 1960. To take the most obvious example, the Advisory Opinion has upheld the doctrine of incomplete decolonisation and thereby raised the question of whether the state of affairs prevailing in the Island since 1960 has been – and remains – unlawful. Various questions arise, which I hereby invite you to address.

By *inter alia* ‘CONFIRMING that the withdrawal of the UK from the Union should not affect ... the rights and obligations of the parties to the Treaty of Establishment’,³⁸ which procured the arguably unlawful detachment of the SBAs from the RoC on 16 August 1960,³⁹ does the SBA Protocol seek to achieve a purpose, which is improper or otherwise unlawful? Does the SBA Protocol thereby endorse an ongoing state of affairs, which perpetuates an unlawful or otherwise wrongful act of colonialism while unlawfully precluding the RoC from completing the decolonization of its territory?⁴⁰

Closing remarks

The primary purpose of this Open Letter has been neither to endorse nor to denounce the Treaty of Establishment, the Treaty of Guarantee, the UK-EU Withdrawal Agreement, the SBA Protocol, the SBAs or Brexit. Instead, its primary purpose has been to highlight various matters, to underline certain concerns and to articulate a number of questions. Given the gravity of the situation facing the UK, the RoC and the EU, the answers to these questions can no longer remain hidden under the carpet where they have remained for far too long. I urge you to provide these answers as a matter of urgency.

Finally, I stress that the views expressed in this Open Letter and in my other publications reflect my personal views and not those of any organisation.

Yours sincerely
Klearchos A. Kyriakides

³⁸ See the Preamble of the Withdrawal Agreement at page 476 of the version of the Agreement laid before the Parliament of the UK on 26 November 2018, at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759053/26_November -
Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759053/26_November_-_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)

³⁹ *The Treaty concerning the Establishment of the Republic of Cyprus [with Exchanges of Notes]: Nicosia, August 16, 1960* (Cmnd. 1252, Her Majesty's Stationery Office, London, February 1961), as published by the Foreign and Commonwealth Office on the website of the Government of the UK, at <http://treaties.fco.gov.uk/docs/pdf/1961/TS0004.pdf>

⁴⁰ I floated variations of these questions at a seminar held at the University of Nicosia and in my aforementioned but hitherto unpublished Additional Written Evidence to the Exiting the European Union Committee of the House of Commons, dated 22 March 2019. Also see the related as well as the other questions I posed in Greek at Κλέαρχος Α. Κυριακίδης, ««Μια καθοριστική στιγμή»: Η Συμβουλευτική Γνωμοδότηση για τα Νησιά Chagos σε ευρύτερο πλαίσιο», », *Σημερινή της Κυριακής*, 3 Μαρτίου 2019, www.sigmalive.com/simerini/analiseis/557069/mia-kathoristikiki-stigmi