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СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА

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Пункт 2 повестки дня

**ЕЖЕГОДНЫЙ ДОКЛАД ВЕРХОВНОГО КОМИССАРА ОРГАНИЗАЦИИ
ОБЪЕДИНЕННЫХ НАЦИЙ ПО ПРАВАМ ЧЕЛОВЕКА И ДОКЛАД
УПРАВЛЕНИЯ ВЕРХОВНОГО КОМИССАРА И
ГЕНЕРАЛЬНОГО СЕКРЕТАРЯ**

**Письмо Постоянного представительства Республики Кипр на имя
Председателя Совета по правам человека***

Женева, 28 апреля 2009 года

* Воспроизводится в приложении в том виде, в котором оно было получено, и только на том языке, на котором оно было представлено.

Annex

H.E. Mr. Martin Ihoeghian Uhomoibhi
President of the Human Rights Council
United Nations Office at Geneva

Excellency,

In accordance with instructions received from my Government, I have the honour to refer to the note verbale dated 26 March 2009 from the Permanent Mission of the Republic of Turkey addressed to the OHCHR, transmitting in an annex the text of a letter of the so-called "Deputy Prime Minister and Minister of Foreign Affairs" of the legally invalid "TRNC" (A/HRC/10/G/12).

The Republic of Cyprus' position on the issue of the circulation by Turkey of letters of the so-called officials of the "TRNC" is well known. Such practice is both an abuse of the process of circulation of UN official documents, and a violation of the provisions of operative paragraph 3 of United Nations Security Council resolution 550 (1984) which, *inter-alia*, "calls upon all States not to recognize the purported state of the "TRNC" [and] not to facilitate or in any way assist the illegal secessionist entity".

Turkey, which now occupies a non-permanent seat in the UN Security Council, ought to acquire a better understanding of and abide by the provisions of relevant SC resolutions, in particular those referring to the "*secessionist acts in the occupied part of the Republic of Cyprus*" (UNSC resolution 550). As the occupying power, Turkey has clear obligations deriving from international humanitarian law, which has long defined the rules on belligerent occupation, and from human rights law, which binds any state exercising effective control over an occupied territory. Turkey must comply with its obligations and continue to do so for as long as it exercises effective control in the occupied area of the Republic of Cyprus through both the 43000 heavily armed Turkish troops it illegally maintains in that area, and its subordinate local administration.

It is regrettable that instead of assuming its responsibilities under the terms of resolution 4(XXXI), which was adopted by the Commission on Human Rights in the aftermath of the 1974 Turkish invasion of Cyprus, and of subsequent CHR resolutions (the most recent being resolution 1987/50), Turkey has chosen to hide behind its subordinate local administration in the occupied area of Cyprus in order to air its views, through the circulation of a document full of unfounded allegations, half-truths and gross inaccuracies.

Turkey cannot avoid its responsibility with regard to the violations of human rights to which the aforementioned CHR resolutions refer, by imposing the responsibility on its subordinate local administration. In fact, these resolutions call for the "full restoration of all human rights to the population of Cyprus, and in particular to the refugees", express alarm at "changes in the demographic structure of Cyprus" through the continuing influx of settlers, and call for the "accounting for missing persons in Cyprus" and for the "restoration and respect of the human rights....of all Cypriots, including the freedom of movement and the right to property"; and these violations are the direct outcome of the acts of Turkey in Cyprus since the 1974 Turkish invasion and military occupation of one third of the territory of the Republic of Cyprus.

Regretfully Turkey insists on politicizing the issue at hand, instead of providing the Human Rights Council with information as to its actions or, at least, intentions with regards to the implementation of the provisions of these resolutions, in particular the restoration of the human rights of the IDPs and the missing persons, and the issue of the illegal alteration of the demographic profile of Cyprus. These violations still remain to be remedied and constitute the sole and only reason for the issue to remain on the agenda of the Human Rights Council.

It should be noted that the continuing and massive violations of human rights committed by Turkey in Cyprus are well documented in relevant judgments of the European Court of Human Rights (ECHR), which in the fourth interstate case of Cyprus v. Turkey found the latter accountable for, *inter-alia*, the following violations:

1. A continuing violation of Article 2 of the European Convention of Human Rights on account of the failure of the authorities of Turkey to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.
2. A continuing violation of Article 5 of the Convention by virtue of the failure of the authorities of Turkey to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there is an arguable claim that they were in Turkish custody at the time of their disappearance.
3. A continuing violation of Article 3 of the Convention in respect of the relatives of the Greek-Cypriot missing persons.
4. A continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.

5. A continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.
6. A violation of Article 13 of the Convention by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1.
7. A violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.
8. A violation of Article 10 of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship.
9. A continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognized.
10. A violation of Article 2 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them.
11. A violation of the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home, as guaranteed by Article 8 of the Convention.
12. A violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment.
13. A violation of Article 13 of the Convention by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

As the judgments of the ECHR are binding and the high Contracting Parties must comply with them, Turkey has, through procrastination and indulging in distractions, acquiesced recently to take some measures aimed at improving the situation with regards to the education rights of

the enclaved Greek Cypriots in the occupied part of Cyprus. Regretfully, on issues related to the human rights of IDPs and missing persons, Turkey continues its tactical procrastination and politicization. With regards to the violations of the human rights of the IDPs, Turkey is suggesting arrangements for "remedies" that belong supposedly to another legal system and not hers, namely, that of her subordinate local administration. In so doing, Turkey tries to escape her own state responsibility, while in parallel she attempts to gain profits of indirect legitimization of a regime which is unlawful under international law. On the issue of the human rights of the missing persons, Turkey tries to present the recent positive developments in the work of the Committee on Missing Persons (CMP) as a substitute for her own state obligations under the Court's ruling; and that is, to circumvent the ruling of the ECHR which established Turkey's responsibility to conduct an effective investigation into the fate of the missing persons, since, according to the Court, the CMP procedures are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention.

It is high time for Turkey to assume its responsibilities and obligations as the respondent government under both the ECHR judgments and the CHR resolutions, instead of trying to undermine the relations between the two communities in Cyprus through the circulation of documents which aim at stirring passions of the past. Turkey should actively and genuinely support the on-going bi-communal negotiations in Cyprus, including through the withdrawal of the 43000 Turkish troops from the island, which compel the Turkish Cypriots to live in isolation and a large number of Greek Cypriots as IDPs.

I should be grateful if you would arrange for the text of the present letter to be circulated as a document of the Human Rights Council, under agenda item 2.

Please accept, Excellency, the assurances of my highest consideration.

Andreas Hadjichrysanthou

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