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大会 2006 年 3 月 15 日题为“人权理事会”的第 60/251 号决议的执行情况

2007 年 6 月 14 日塞浦路斯常驻联合国日内瓦办事处代表团致人权理事会秘书处的普通照会

塞浦路斯共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团向联合国人权事务高级专员办事处和人权理事会秘书处致意，谨此转交 2007 年 3 月 27 日的一份备忘录，其中载有塞浦路斯共和国政府对于秘书长塞浦路斯人权情况报告(2007 年 3 月 9 日的 A/HRC/4/59 号文件)的评论和意见，涉及人权委员会塞浦路斯人权情况各项决议(1975 年 12 月 13 日第 4(XXXI)号决议、1975 年 2 月 27 日第 4(XXXII)号决议、1978 年 3 月 7 日第 17(XXXIV)号决议和 1987 年 3 月 11 日第 1987/50 号决议)及随后各项有关决定的执行情况，这份备忘录是根据人权理事会第 2/102 号决定提交理事会第四届会议的。

塞浦路斯共和国常驻代表团谨请人权理事会秘书处将本照会及其所附文件* 作为人权理事会第五届会议的正式文件分发。

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* 附件不译，原文照发。

Annex

MEMORANDUM

On the Secretary General's report on the Situation of Human Rights in Cyprus (A/HRC/4/59, 9 March 2007)

1. It will be recalled that, since the Turkish military invasion of Cyprus in 1974 and the occupation of a large part of its territory, the Human Rights Commission adopted resolutions 4 (XXXI) 13.2.1975, 4 (XXXII)/27.2.1976, 17 (XXXIV)/7.3.1978 and 1987/50-11.3.1987, on the question of Human Rights in Cyprus. These resolutions called for "full restoration of all human rights to the population of Cyprus, and in particular to the refugees"; expressed alarm at "changes in the demographic structure of Cyprus" with the continuing influx of settlers; called for the "accounting for missing persons in Cyprus without any further delay" and also called for the "restoration and respect of the human rights…of all Cypriots, including the freedom of movement and the right to property", on which action continues to remain operative. In subsequent annual decisions, the Commission requested the Secretary General to submit a report on their implementation.

2. It is stressed that these resolutions remain unimplemented by Turkey, the occupying power in Cyprus. In this regard the current report presents a totally unbalanced, misleading and distorted picture of the human rights situation in Cyprus. The very essence and the cause of the continuing massive violation of human rights in Cyprus, which is the continuing Turkish military occupation of 36,4% of the territory of the Republic of Cyprus with all the consequences of the Turkish invasion of 1974 remaining unchanged, is totally omitted in the report. The same goes for the responsibility of Turkey, the occupying power, which exercises overall effective control in the occupied area as a result of the presence of 43,000 troops. With this overall observation in mind which makes the report totally unacceptable, the Government of the Republic of Cyprus wishes to make the following specific observations and comments on the report:

3. Attention is drawn to the relevant judgments of the European Court of Human Rights, which clearly state (*Cyprus v. Turkey case §§76-77)* that Turkey exercises effective overall control over the occupied part of Cyprus and is, therefore, responsible for any acts committed either by her own troops stationed there or by its subordinate local administration.

4. The report in its conclusions refers to the "*de facto partition as constituting a major obstacle to human rights*" and that "*the situation will greatly benefit from the achievement of a comprehensive settlement of the Cyprus problem*." Reference, however, is not made to the responsibility of Turkey, the occupying power, for massive and continuing human rights violations in Cyprus for nearly 32 years and to the requirement that the Turkish government take action for their restoration.

5. In this extent, while the report made a reference to the area of Varosha and to para. 7 of E/CN.4/2006/31, Turkey's responsibility for the maintenance of the status quo should have been clearly referred to, as well as the UN position that the Turkish forces should withdraw

and the city be returned to its lawful citizens should be reiterated, as called for by UNSC Resolution 550 (1984), which "*Considers attempts to settle any part of Varosha by people other than its inhabitants as inadmissible and calls for the transfer of this area to the administration of the United Nations*";

6. With reference to the Report's conclusion that freedom of movement is still limited in the occupied area, the Republic of Cyprus wishes to point out that restrictions on movement are not only limited to military zones, which cover a large part of the occupied area, but are also extended to other areas. The Office of the High Commissioner is urged to apportion responsibility for the continuing restrictions in the freedom of movement, which have affected not only Cypriot citizens but also citizens of the EU and third countries, who were illegally arrested and detained because of their presence in certain "sensitive" areas. The responsibility for such restrictions rests solely on the Turkish occupying forces, which effectively control the occupied area. The Republic of Cyprus calls on the Office of the High Commissioner to also consider the restrictions imposed and the continuing violations taking place with regard to the freedom of settlement and freedom of establishment, that both the General Assembly of the UN as well as the Commission on Human Rights and the Sub-Commission of Human Rights have repeatedly condemned and called for their restoration.

7. The Government of the Republic of Cyprus considers terms such as "north" and "south," as well as terms such as the "Turkish Cypriot Administration," as totally unacceptable, as they tend to denote the existence of a separate entity in the occupied part of Cyprus. Moreover, references to the "Greek Cypriot authorities" constitute a flagrant violation of UN SC Resolutions 541 (1983) and 550 (1984). It is necessary that the situation in Cyprus is accurately presented in the UN Secretary General's reports.

8. The report does not deal with the massive population transfers by the occupying power to the occupied area of settlers from Turkey. The Republic of Cyprus calls on the Office of the High Commissioner to examine the colonization policy carried out by the occupying power in the area under its control, in violation of the Geneva Conventions of 1949 and its Additional Protocols, the Rome Statute of the International Court and numerous UN Resolutions "deploring unilateral actions that change the demographic structure of Cyprus". The number of settlers brought into the occupied part of Cyprus, in Turkey's attempt to alter the demographic composition of the island, is alarming and action should be taken to prevent continuation of this policy and its effects.

Freedom of Movement - crossing points

9. The easing of restrictions on freedom of movement has only been partial and any decision within this context is taken by the Turkish Military Forces occupying illegally the 36,4% northern part of the island. This is in fact acknowledged, at least in part, in paragraph 5 of the Report.

10. The amendment of the Green Line Regulation, by the European Union, to include a provision for three additional crossing points was made possible because of a relevant request by the Government of the Republic of Cyprus, which was communicated to the European Commission.

11. The opening of the crossing point at Ledra Street in Nicosia was, in fact, delayed for more than a year due to the illegal construction, at the very location of the crossing point, of a foot-bridge by the Turkish Military Forces, with the aim of continuing the practice of military patrols on Hermes Street, which intersects Ledra Street. The Government of the Republic of Cyprus had communicated to the UN, in September of 2005, its readiness to open the crossing point within 48 hours from the moment the other side communicated a similar readiness and remains committed to the opening of the crossing point, as indicated by the recent demolition by the Government of Cyprus of the wall which is located south of the Green Line. The opening of the Ledra crossing point remains pending to the fulfillment of specific security provisions, pointed out at the Government's communications, such as: demining of the area; restoration of surrounding buildings in danger of collapsing; clearing the area of military presence by the withdrawal of the Turkish forces.

12. The issue of the limitation of the freedom of movement imposed by the illegal identity checks performed by the so-called authorities of the illegal entity in the occupied part of Cyprus and the issuing of so-called "visas" to all those crossing is totally omitted in the report, which is regrettable.

13. With reference to para. 6 regarding bi-communal activities, the Government of the Republic of Cyprus has cooperated with the directors of the programme UNDP-ACT, the mandate of which provides for transparency and consultation with the Government. To that effect the Government has signed an MOU with UNDP-ACT setting out the principles and the goals of the programme. All activities not within the accorded principles or which do not promote bi-communal cooperation and reunification cannot be supported.

14. The references to "lack of cooperation between the two sides, in particular with regard to the law enforcement agencies", gives the impression that the UN promotes the secessionist entity and its illegal "organs", in violation of the resolutions adopted by the UNSC condemning the attempted secession (541 (1983) and 550 (1984)).

Right to Property

15. The Republic of Cyprus notes the Office of the High Commissioner's extensive consideration of court cases brought by reference to property rights in Cyprus and considers that the report does not appropriately address the issue of the violation of property rights, but makes an effort to keep a balanced approach by the reference that it is an *"extremely sensitive issue with a trend of increasing cases of litigations"*. However, the issue of the violation of property rights is not merely one of access to courts. It is a matter of the continuing and massive violation of the human rights of the displaced population of Cyprus, as a result of Turkish invasion and occupation and of the forcible separation of the population of Cyprus.

16. The report omits the substance of the issue, which is the violation of the rights of all displaced persons to peacefully enjoy their homes and properties situated in the occupied area of Cyprus. The reference made in para. 11 to the European Court of Human Rights decision of December 2005, regarding the introduction of a remedy by Turkey is misleading and selective. It ignores the fact that in the *Xenides-Arestis v. Turkey* case the Court recalled all its previous judgments relating to property claims by Greek Cypriots and

reaffirmed Turkey´s responsibilities for human rights violations in the occupied areas of the Republic of Cyprus, namely that:

a. Turkey exercises effective overall control over the occupied part of Cyprus and has, therefore, an obligation, under the European Convention on Human Rights, to safeguard, respect and restore the human rights and fundamental freedoms of all Greek Cypriots, including their right to peaceful enjoyment of their properties in the occupied part of Cyprus,

b. Greek Cypriot dispossessed owners of properties in the occupied part of Cyprus *"…cannot be deemed to have lost title to [their] property…[and] they must still be regarded to have remained the legal owners of the land"*.

17. Concerning the Loizidou case, the fact that the applicant has the right to have full access to her property, according to the 1996 ECHR judgment, is omitted. The Committee of Ministers is expecting "clear evidence" from the Turkish government of how all violations of the applicant's right to access to and enjoyment of her property will be fully remedied. Turkey's responsibility is omitted in the report.

18. While the procedural part of the *Orams v. Apostolides* case is presented in para. 13, the essence of the case is omitted. That is, the fact that the Cypriot courts have jurisdiction over the totality of the territory of the Republic of Cyprus, that the Greek Cypriot owners of property in the occupied area remain the legitimate owners of their property and that buyers or occupiers of land belonging to Greek Cypriots in the occupied area are considered trespassers and can be prosecuted. The claim that TC property cases are pending in the ECHR is totally false. It is regrettable and raises serious concerns that the UN High Commissioner for Human Rights uses false information in such an important issue.

19. The report does not address the unprecedented construction boom in the occupied area and the massive illegal sale of properties belonging to Greek Cypriots displaced by the Turkish occupying forces. This alarmingly continuing practice is part of a policy to alienate these properties from their lawful owners, in order to permanently deny to them restoration of their property rights, as well as resettlement to their places of origin.

Missing persons

20. Even though the reactivation of the CMP is considered a positive development, the issue of the fate of the missing persons will not be settled within its context, as the ECHR judgment in the Case of Cyprus v. Turkey clearly states: "*the respondent state´s procedural obligations at issue cannot be discharged through its contribution to the investigatory work of the CMP. Like the Commission, the Court notes that, although the CMP´s procedures are undoubtedly useful for the humanitarian purpose for which they were established, they are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention, especially in view of the narrow scope of that body´s investigations."*

21. Turkey's responsibility under the judgment should have been addressed by the report, namely the failure of the Turkish authorities to conduct an effective investigation into the fate of the Greek Cypriot missing persons. In this regard, Turkey has not implemented the binding decision of the Court and instead attempts to divert the attention to the activities of the CMP, the mandate of which does not restitute the right to the truth of the missing persons and their relatives. The Government is not aware that the CMP in 2007 "*will resume its investigations into the fate of the missing persons beyond what the exhumation and identification process will yield*", as mentioned in para. 16.

The enclaved

Education rights

22. The report does not present the situation of the enclaved persons in the occupied area of Cyprus and avoids any reference to the continuing violation by Turkey of the 3rd Vienna Agreement. It also ignores the fact that the European Court of Human Rights in its *Cyprus v. Turkey* judgment of 10 May 2001, found Turkey responsible for 7 violations of the European Convention on Human Rights (out of 14 violations in total) related to the issue of the living conditions of the Greek Cypriots in the occupied area of Cyprus, including violations of the freedom of thought, conscience and religion, the freedom of expression, the right to peaceful enjoyment of one´s property and respect for one´s private and family life and the right to education.

23. There is no reference to the restrictions imposed on Greek Cypriots by the Turkish side in bequeathing their property to their heirs, while the general plight of these people whose numbers are being dramatically reduced is not at all reflected.

24. The Republic of Cyprus welcomes the improvements with regard to education of Greek Cypriot enclaved schoolchildren. However:

25. The report portrays the fact that textbooks for the enclaved children still have to go through "inspection" by the occupation regime as a mere complaint by the Government. It is noted that the present school year commenced without text books, which arrived late due to a delay in the so-called "inspection".

26. The assignment of all four teachers mentioned in paragraph 17 was delayed, the last teacher assigned as late as the end of November 2006. These delays and their negative impact on the education of the enclaved children in Rizokarpaso, are not taken into consideration by the report.

27. The attempt to compare the situation of the Turkish Cypriot children living in the government controlled area (para. 19), leads to distortions and simplifications. The parents of the Turkish Cypriot students in Limassol have been asked three times by the Government and by UNFICYP, and showed their clear preference for their children to continue their studying in the Ayios Antonios school. The above was omitted, while the activities of the Turkish Cypriot Teachers' Union are mentioned. Moreover, the fact that the Ayios Antonios primary school in Limassol has been awarded second place in the

"Commonwealth Education Good Practice Award" for its programme for Turkish Cypriot students is selectively left out of the report.

28. With reference to the Bologna process and other EU programs, it should be noted that they are not within the UN responsibilities. These processes and programs are governed by certain rules and regulations as well as certain requirement that involve sovereign states, states parties to relevant conventions and EU member states and not an illegal secessionist entity or its illegal institutions.The so-called "universities" in the occupied area are not recognised by the competent authorities of the Republic of Cyprus and have not undergone any educational evaluation procedures. Moreover, they have been established illegally on usurped Greek Cypriot properties.

Religious rights

29. The Republic of Cyprus is of the opinion that to restrict even a single person from exercising his/her religious right in the town or village where s/he lives in or comes from constitutes a gross violation of the freedom of religion. In the case of the religious rights of the enclaved, it is the violation of the human right and not the number of people whose right is violated that should be taken into consideration.

30. The cases of religious services pointed out in the report (para. 20) are welcomed. However, even if it constitutes a step forward, religious freedom cannot be considered existing in the occupied areas. The cases mentioned in the report concern only a very limited number of religious ceremonies during important religious holidays and have an obvious temporal distance between them. In addition to that, asking for authorization prior to religious services is also considered a violation of the freedom of religion. It should be underlined that the Greek orthodox religion requires daily morning masses (*orthros*), out of which the most ceremonial one is the Sunday mass. This is important especially for the enclaved Greek Cypriots and Maronites, who are not able to exercise their basic religious rights.

31. Only three Greek orthodox churches are actually allowed to function in the occupied areas: These are the Ayios Mamas church, the Ayia Triada church and the Apostolos Andreas monastery.

32. In the area of Karpasia, where most of the enclaved reside:

- The Ayios Therissos church has been closed; so has been the church of Ayios Andronikos.

- The Leonarisso church has also been closed, and the occupying forces do not allow its reopening. The church was looted in 2005.

33. The Apostolos Andreas Monastery's restoration is being impeded by the occupation forces, which have not even permitted the transportation of metallic building material to the occupied areas. We note that the above material, which cannot be found in the occupied areas, is urgently needed for preventing the collapse of a wall of the old monastery.

Meanwhile, the Government of the Republic of Cyprus has expressed the readiness of the experts assigned by the orthodox church to begin restoration works, for which UNFICYP transmitted a negative answer.

Destruction of religious sites

34. It is to be regretted that the Secretary General in his report does not mention the systematic and severe destruction of the religious and cultural sites in the northern part of Cyprus, which remain under Turkish military occupation. The specific programs of the Republic of Cyprus for the preservation of mosques in the government controlled area are also omitted.

35. It is reminded that since the1974 invasion and the illegal occupation of 36.4 % of Cyprus' territory, the religious and cultural heritage of Cyprus has been severely damaged due to the ongoing policy of pillage, destruction and disrespect of the occupation authorities.

36. According to Cypriot and international sources (articles, publications), it is estimated that more than 500 Greek Orthodox churches and chapels and 17 monasteries that are located in towns and villages of the occupied area have been pillaged, deliberately vandalized and in some cases, demolished.

37. Until today, the location of the ecclesiastical items of these churches, including more than 15 000 portable icons, remains unknown, while more than 60 000 ancient artifacts have been illegally transferred to different countries around the world. The most significant and priceless icons came in possession of auction houses and were illegally sold by art dealers abroad.

38. The desecration of more than 133 churches, chapels and monasteries, the conversion of 77 churches into mosques and the use of 41 churches by the occupation forces as depots, dormitories or stockyards, clearly prove that the target of the occupation authorities has always been the religious and cultural heritage in the northern part of Cyprus.

39. In particular, the recent conversion of the church of Ayia Anastasia in the occupied Lapithos (Kyrenia region) into a luxurious hotel and casino, the use of the church of Panagia Chrysotrimithiotissa in Trimithi (Kyrenia region) as a school of fine arts and the conversion of the Armenian Monastery of Sourp Magar (founded in the Medieval period) into a cafeteria, constitute concrete proof of the illegal and anachronistic policies of the occupation authorities.

Economic rights

40. It is noted that the Office of the High Commissioner's mandate does not make explicit reference to economic rights. Nevertheless, the Government of the Republic of Cyprus wishes to remind of its efforts to assist the economic development and welfare of the Turkish Cypriot community and to that end, it has taken multiple measures, such as the approval within the EU, of the European Commission's financial aid package; efforts towards the success of the "Green Line" Regulation; free medical care and other social security measures. The number of Turkish Cypriots employed in the Government controlled areas has doubled. As a result of these measures, the per capita income of the

Turkish Cypriot community has reached USD11,000 in a two year period. EU Regulations do not concern the UNSG, but solely the EU member states.

Turkish Cypriot community in the Government controlled area

41. The visits of Turkish or other relatives of Turkish Cypriot prisoners (para. 22) is not denied, as long as their entry to the Republic of Cyprus has been through a legal port of entry.

42. References to "systematic discrimination" of Turkish Cypriots "concerning immigration and deportation related cases", to the fact that "official documents and applications forms are not available in Turkish" and to "difficulties for Turkish Cypriots to secure citizenship for a foreign spouse" (para. 8) are considered unfair. The Government issues all types of official documents in Turkish.

43. The President of the Republic of Cyprus has condemned the unfortunate case of the attacks in the English School, mentioned in para. 9, and the Government of the Republic of Cyprus has taken action in dealing with the case. The police have already taken statements of the people involved and are thoroughly investigating into the matter.

27 March, 2007

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