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Note verbale datée du 16 mars 2021, adressée au Haut-Commissariat des Nations Unies aux droits de l'homme par la Mission permanente de la Turquie auprès de l'Office des Nations Unies à Genève

La Mission permanente de la République turque auprès de l'Office des Nations Unies à Genève et des autres organisations internationales en Suisse transmet la lettre du Ministre des affaires étrangères de la République turque de Chypre-Nord, Tahsin Ertuğruloğlu, qui présente le point de vue des Chypriotes turcs au sujet du rapport du Haut-Commissariat sur la question des droits de l'homme à Chypre (A/HRC/46/23), soumis au Conseil des droits de l'homme à sa quarante-sixième session (voir l'annexe).

La Mission permanente de la République turque saurait gré au Haut-Commissariat de bien vouloir faire distribuer la présente note verbale et son annexe* en tant que document du Conseil des droits de l'homme.

* L'annexe est reproduite telle qu'elle a été reçue, dans la langue de l'original seulement.

Merci de recycler

Annex to the note verbale dated 16 March 2021 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Letter dated 15 March 2021 of H. E. Tahsin Ertuğruloğlu, Minister of Foreign Affairs of the Turkish Republic of Northern Cyprus addressed to the United Nations High Commissioner for Human Rights

Excellency,

I have the honour to refer to the Report of the Office of the United Nations High Commissioner for Human Rights on the "Question of human rights in Cyprus", dated 11 February 2021 (A/HCR/46/23) which covers the period between 1 December 2019 and 30 November 2020, and convey to Your Excellency, the general comments of the Turkish Republic of Northern Cyprus (TRNC) as well as our assessment of the various factual errors and omissions in the Report.

As Your Excellency is well aware, the Turkish Republic of Northern Cyprus has been requested by your esteemed Organisation to convey its views as one of the co-owners of the island of Cyprus, regarding the situation of human rights in the Turkish Republic of Northern Cyprus (TRNC), as well as the human rights concerns of the Turkish Cypriot people relating to the issues included in the Report. However, it is very disappointing to observe that the factual contribution put forth by the Turkish Republic of Northern Cyprus through the extensive written document entitled "Contributions of the Turkish Cypriot side to the upcoming Report on the Question of Human Rights in Cyprus" which was submitted to your Office during the preparation phase of the Report, have not been totally taken into consideration.

I would like to emphasize that although the TRNC is not able to be a party to the international systems on human rights and freedoms due to the unfortunate political situation and the unacceptable status quo on the island, the Universal Declaration of Human Rights and other international tools on human rights and freedoms have been incorporated in its domestic law.

As a full-fledged democratic State with all of its institutions intact, where the rule of law prevails and inalienable human rights and fundamental principles are upheld and well-respected, the TRNC is committed to continuing its efforts to promote human rights enshrined in international human rights instruments in North Cyprus, including the rights to life, property and education, as well as the freedoms of religion, conscience, movement and speech.

The introduction section of the Report provides a brief information regarding the political developments on the island in 2020. I would like to take this opportunity to put on record the position of the Turkish Republic of Northern Cyprus, on the way forward. As a matter of fact, the negotiations on the basis of a bi-communal, bi-zonal federation have been exhausted. This is due to recurrent and persistent Greek Cypriot refusal to share power and prosperity with the Turkish Cypriot side and its simultaneous and all-out efforts to isolate and suppress the Turkish Cypriot People, while only paying lip service to a federal settlement for over 50 years with a view to perpetuating and consolidating the unacceptable and unsustainable status quo. This continued insincerity and unwillingness of the Greek Cypriot political elite to negotiate in good faith has inevitably led the Turkish Cypriot People to elect a President in the TRNC Presidential Elections, in October 2020, with a mandate for a two-State settlement on the basis of sovereign equality, in line with the realities on the ground.

Based on the lessons drawn from the previous processes, it has become evident that without first levelling the playing field between the two sides in Cyprus, any attempt to find a negotiated settlement is bound to fail and can only lead to trapping us in a vicious cycle of failed processes. Negotiations cannot be an end in itself but should be a means to an end, i.e. a freely negotiated and a mutually acceptable settlement. Thus, a process of negotiations for

the sake of negotiations is counterproductive to the settlement efforts as it undermines the prospects of such an outcome.

Cognizant of the fact that this straitjacket is not leading us to the desired outcome, the UN Secretaries-General have long been encouraging the two sides to be open-minded and creative in their search for a settlement in Cyprus. Accordingly, the former Secretary-General, H.E. Mr. Ban Ki-moon, has called numerous times on the two sides to "*think outside the box*" and current Secretary-General, H.E. Mr. Antonio Guterres, repeatedly underlined that "*this time must be different*". It is our considered view that this time can only be different if we learn from the previous mistakes and do not trap ourselves in the same formula that has repeatedly proven to be a recipe for failure for over 50 years.

In view of the foregoing, the Turkish Republic of Northern Cyprus supports UN Secretary-General's efforts to convene an informal five-plus-UN meeting. As the Secretary-General underlined "*The purpose of the meeting will be to determine whether common ground exists for the parties to negotiate a sustainable, lasting solution to the Cyprus problem within a foreseeable horizon*" and "*to clarify the true extent of the commonality of vision and outline steps necessary to chart a way forward.*"(S/2021/5). In view of the fact that "*The primary responsibility for the future process remains with the parties, especially the two leaders",* we expect from the United Nations as well as the international community at large to respect the free will of the two peoples in Cyprus and their inherent and inalienable right to freely discuss and formulate what kind of a future they envisage for themselves on the island. Needless to say, any attempt to impose a settlement framework on the two sides in Cyprus has neither a legal nor a moral basis.

It should be noted that drawing a direct link made in the Report in paragraphs 11 and 17, between the so-called "division" of the island and the difficulties faced on the implementation of international human rights standards throughout the island does not reflect the realities on the ground. In fact, it is not the absence of a political settlement but the refusal of the Greek Cypriot side to communicate and cooperate between the two sides on issues of mutual concern, including human rights issues that is causing difficulties. Moreover, international organisations also fall short of communicating and cooperating with the Turkish Cypriot side even on humanitarian matters, due to the Greek Cypriot political propaganda and pressure, and this is also contributing to the difficulties in this regard.

As regards the reference made in paragraph 18, that COVID-19 pandemic has affected a range of human rights and the reference to "uncoordinated decisions" between the two sides in paragraph 19, it is very unfortunate that the Greek Cypriot side acted reluctantly to cooperate with the Turkish Cypriot side, due to political considerations. Moreover, international community's faltering stance on the matter has led to failure to cooperate even at this extraordinary pandemic time, politics winning over the good of the two Peoples on the island. In fact, the Greek Cypriot administration failing to cooperate with the Turkish Cypriot side during this difficult period, went as far as preventing any cooperation and communication between the Turkish Cypriot side and the World Health Organisation.

As is known, it was the Greek Cypriot side which closed on 29 February 2020, 4 crossing points, using a humanitarian issue such as COVID-19 as pretext, to serve its own political agenda. The insistence of the Greek Cypriot side to keep the Lokmacı/Ledra Street crossing point closed under the false pretext of health considerations is clearly aimed at crippling tourism, thus the economy in the Turkish Republic of Northern Cyprus. This ill-intentioned and politically-motivated decision, which is fueling further mistrust between the two sides, is part and parcel of the general obstructionist policies of the Greek Cypriot leadership.

It is also worth reminding, in line with the reference made to "population of Cyprus" in paragraph 20 that, since the destruction of the 1960 partnership Republic in December 1963, the Turkish Cypriots and Greek Cypriots have been governing themselves separately and exclusively. Therefore, reference should have been made to two separate Peoples on the island.

Paragraph 23 of the Report contains a factual error. It is most disappointing that the Rapporteur, once again, opted to communicate developments regarding the work of the Committee of Missing Persons with totally erroneous terminology deliberately employed by

the Greek Cypriot side as part of its efforts to imply that its counterpart on the issue is Turkey. Nothing could be further from the truth.

The Committee on Missing Persons in Cyprus (CMP) was established as a tripartite UN committee with a Turkish Cypriot, a Greek Cypriot and a third member appointed by the UN Secretary-General with a specified mandate and principles of operation. Accordingly, the requests for access to all areas of excavation in North Cyprus and South Cyprus as well as the arrangements for carrying out the excavation are respectively made by the Turkish Cypriot and Greek Cypriot members with the relevant Turkish Cypriot and Greek Cypriot authorities.

In this connection, it should be noted that our authorities exercise sovereignty and jurisdiction within their own territory, i.e. North Cyprus and thus the sole authority to grant permission for excavations in North Cyprus is the Government of the TRNC.

The Report, in paragraph 27, disappointingly fails to reflect the truth as regards the issue of landmines and opts to assign equal responsibility on both sides and refrains from openly stating that it is the Greek Cypriot side's delaying tactics and lack of cooperation which hinders progress towards achieving a mine-free island. It should be acknowledged that we are committed to achieving a mine-free island, as demonstrated by the concrete constructive proposals made in 2014, 2015 and 2018 towards this end, which have all been turned down by the Greek Cypriot side.

The Report, in paragraph 29, refers to "internally displaced persons", a terminology which is in line with the archaic Greek Cypriot propaganda. The *Voluntary Exchange of Populations Agreement*, at the inter-communal talks held on 2 August 1975, in Vienna, was agreed between the two sides in the aftermath of which Turkish Cypriots and Greek Cypriots were respectively transferred to North Cyprus and South Cyprus under the auspices of the UN. As a result, for more than 50 years, the Turkish Cypriot people as well as the Greek Cypriot people have been living peacefully side by side in their own areas. Under these circumstances, referring to Turkish Cypriots living in North Cyprus and Greek Cypriots living in South Cyprus as displaced is inappropriate. I also would like to underline that there are cases around the world where similar voluntary population exchange agreements were reached and implemented, however, in none of these cases the people who moved as a result of such agreements are referred as "displaced".

As regards the section on freedom of movement under paragraphs 36 and 37, it should be stressed that the opening of crossing points in 2003 was a unilateral decision by the Turkish Republic of Northern Cyprus initiated by the Founding President Rauf Raif Denktaş. As the party taking initiative towards enhancing the freedom of movement across the island, the Turkish Cypriot side imposes no restrictions on freedom of movement on anyone crossing between North Cyprus and South Cyprus. What is impeding the freedom of movement on the island is the discriminatory and arbitrary policies employed by the Greek Cypriot side against some Turkish Cypriots and third country nationals in this regard.

In paragraph 38, the Report refrains from referring to the fact that the root of the cause of the problem on restrictions on the freedom of movement on the island is the Greek Cypriot side's obstructionist and arbitrary acts which have increased during the reporting period, especially using COVID-19 as a pretext to further intensify its obstructive and arbitrary implementation as regards the crossings of Turkish Cypriot citizens of different origins and/or with foreign residency as well as EU and foreign nationals from the crossing points to and from North Cyprus. As of 1 July 2020, such people who have arrived on the island via South Cyprus with the intention to cross to or from North Cyprus have been prevented by the Greek Cypriot administration.

The origin of this entrenched position goes back to February 2020 when Greek Cypriot council of ministers approved a series of amendments to the Green Line Regulation's (GLR) Code of Implementation (EU Council Regulation 866/2004), particularly prohibiting foreign nationals from crossing to North Cyprus. These amendments in question are in violation of the Green Line Regulation, which regulates the crossing of the border by all citizens of Southern Cyprus, EU citizens and third-country nationals who are legally residing in Northern Cyprus, and by all EU citizens and third country nationals who entered the island through Southern Cyprus. Though the said amendments made by the Greek Cypriot

administration is referred to as the GLR's Code of Implementation, what, in fact, is done by the Greek Cypriot leadership is changing the very substance, content and spirit of the GLR, which can only be amended with the agreement of the European Commission. The Greek Cypriot administration's arbitrary act, preventing crossings of Turkish Cypriot citizens of different origins as well as foreign nationals from the crossing points between the TRNC and South Cyprus, is furthered by the Greek Cypriot administration, at a time when measures taken at the crossing points in relation to COVID-19 pandemic have been eased. This proves beyond doubt that this administration is bent on even exploiting a humanitarian issue such as a pandemic as a pretext to suit its political agenda.

In paragraph 40, the Report makes a reference to the 175 refugees which were denied by the Greek Cypriot coastguard from landing, however it falls short of mentioning the fact that these refugees denied at gunpoint by Greek Cypriot coastguard were trying to join their families already settled in South Cyprus. The said boat then had to navigate towards our country and the TRNC authorities rescued them in shallow waters when their vessel capsized. Despite the presence of a clear public health risk due to COVID-19, the TRNC authorities provided shelter as well as necessities to the refugees and administered PCR tests. This incident shows the stance and the mentality of the Greek Cypriot administration vis-a-vis this humanitarian issue, denying these people their basic human right, right to seek asylum, as well as the humanitarian assistance and protection.

It is disappointing to observe that paragraph 46 of the Report did not provide the details of judgments of the Greek Cypriot administration regarding the properties of the Turkish Cypriot people left in the South. During the reporting period, in case number 249/2012, where the Turkish Cypriot property owner, Barutçuzade Ahmet Vasıf Efendi Vakfı, a legal person, managed to receive a judgment on appeal, after 8 years of litigation, it became clear that the Greek Cypriot courts continue to deny the Turkish Cypriot property owners their rights. In the judgment that was delivered on 5 March 2020, the refusal of the Greek Cypriot Lands Office in Nicosia to register the lawfully appointed mütevelli/trustee as the owner of the properties in question was not overturned, thus the Custodian taking over also the right to apply to the courts on behalf of the owner. As a result, the Vakıf was denied the right to pursue its ownership rights before Greek Cypriot courts in the way directed by the ECtHR. Instead, the Greek Cypriot Court, relying on pre-2010 precedents, considered the properties abandoned and did not overturn the decision of the administration to seize three buildings in 2007 and 2012, despite the fact that they were not abandoned as the Vakıf continued to exercise its property rights on some of the properties and derived rents from the premises until the date they were deemed abandoned. This case shows once again that the "Custodianship Law" in South Cyprus hinders the rights of Turkish Cypriot property owners, because it relinquishes these rights to the Greek Cypriot administration for an indefinite period.

Regarding the references to the closed area of Maraş (Varosha) in paragraphs from 48 to 51 of the Report, I would like to put on record that the steps we have taken are in line with international law and without prejudice to private property claims. As a matter of fact, it is a clear contradiction on the part of the international community to repeatedly stress the fact that the status quo is unacceptable and unsustainable while at the same time criticizing the constructive steps taken in the closed area of Maraş, which has long become a major symbol of the status quo.

Paragraph 53 of the Report fails to reflect the actual number of religious services facilitated in the Turkish Republic of Northern Cyprus between December 2019 and March 2020, during which 41 services, in total, were approved. Out of the 41 approved services, 16 of them were held between 1 December 2019-31 December 2019 and 25 of them were held between 1 January - 8 March 2020. Furthermore, the access of the Turkish Cypriot people to the religious sites in South Cyprus remains strictly restricted. Unlike our efforts to preserve and promote religious freedom, there are only 8 mosques that are open for prayer in South Cyprus, some of which lack basic facilities, as opposed to the 78 churches open for individual or collective worship in North Cyprus.

The wording adopted in paragraph 59 as "affected areas not under the effective control of the Government of the Republic of Cyprus" contradicts with the realities on the island and is totally unacceptable. It is amply clear that, since the destruction of the 1960 partnership

Republic in 1963 through force of arms by the Greek Cypriots, neither side has had jurisdiction over the other and each side has ruled itself since then. Hence, ever since the forcible expulsion in 1963 of the Turkish Cypriot co-founder partner from the Government of the said partnership Republic, there has been no single constitutional Government representing both peoples of the island or capable of representing, legally or factually, the whole of Cyprus. Each side has since ruled itself, while the Greek Cypriot side has continued to unlawfully claim that it is the "Government of Cyprus".

Paragraph 62 of the Report refers to the education rights of the Turkish Cypriot people however fails to mention the fact that the Turkish Cypriot students have limited access to European Union exchange and educational programmes. This limitation is very extensive and includes total exclusion from access to the most important educational programmes of the European Union, such as the Erasmus Programme and Bologna Process, as a result of the Greek Cypriot side's obstructionist actions which politicize the issue of education.

The Report, in paragraph 63, refers to the calls of the Security Council upon the leaders to address impediments to peace in school materials, including text books, as a contribution to trust-building between the peoples but overlooks the fact that the Turkish Cypriot side has already revised its school books a few years back, removing all negative language in the textbooks while the Greek Cypriot side has been refusing to revise the elements of enmity and racial slurs contained in the school books used in Greek Cypriot schools in South Cyprus. Moreover, in paragraph 65, the Report refers to the issue of appointment of Greek Cypriot teachers to the Greek Cypriot school in the Karpaz region but omits to provide the justified reasons behind our objection to the appointment of certain teachers. The objection of the Turkish Cypriot side to the appointment of certain teachers is not on an arbitrary basis but rather in line with the principles enshrined in the Universal Declaration of Human Rights (UDHR), especially in Article 26. Unfortunately, some of the Greek Cypriot teachers appointed to the Greek Cypriot schools in North Cyprus use racist, offensive and chauvinistic language against Turkish Cypriots and Turkish people. In cases where this behaviour is established beyond doubt and/or in cases where a new nominee is established to have a chauvinistic background with such tendencies, the appointment of these teachers are naturally not approved by the Turkish Republic of Northern Cyprus authorities.

It is crucial to remind that any human rights report to be issued on Cyprus should not ignore the unjust isolation imposed on the Turkish Cypriot People for many years. For more than 50 years, the Turkish Cypriot People have been prevented from exercising their basic human rights deriving from principles enshrined in the Universal Declaration of Human Rights without any meaningful and tenable explanation or justification. The all-encompassing isolation imposed on the Turkish Cypriot people ranges from denial of their right to representation in international for a (i.e. Turkish Cypriot people are prevented from representing themselves at international institutions like United Nations and its bodies etc.); the prevention or restriction of their travel abroad (i.e. no direct flights, travel documents not accepted) and their communication with the outside world (i.e. no post and telecommunication except Turkey); the hindrance of trade and tourism with the outside world, and the hampering of all cultural and sporting relations of the Turkish Cypriot people with other countries (i.e. Turkish Cypriot people are prevented from participating at international cultural and sporting events such as Olympics, Eurovision, FIFA and UEFA activities).

More than sixteen years have elapsed since the report of the then UN Secretary-General to the Security Council dated 28 May 2004 (S/2004/437), where it was clearly stated that "*there exists no rationale for pressuring and isolating the Turkish Cypriots*". Therefore, we naturally expect Your Excellency and the United Nations to make the necessary call to the international community to lift the unjust and inhuman isolation imposed on the Turkish Cypriot people.

It is also unfortunate that the Report does not make any reference to the racially motivated attacks by the Greek Cypriots against the Turkish Cypriot people which occurred during the reporting period despite the fact that we have provided a detailed list of such attacks during the reporting period. Moreover, there is no mention of the recent hate attacks and vandalism to the mosques of Bayraktar, Köprülü and Tuzla mosques occurred during the reporting period.

In the interest of reflecting the human rights situation on the island objectively, I hope and trust that the contributions of the Turkish Republic of Northern Cyprus will be addressed in the upcoming reports of the OHCHR.

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

(*Signed*) Tahsin Ertuğruloğlu
Minister of Foreign Affairs