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Letter dated 31 July 1990 from the Permanent Representative of
Turkey to the United Nations addressed to the Secretary-General

I have the honour to submit, enclosed herewith, a letter addressed to you by His Excellency Mr. Özer Koray, Representative of the Turkish Republic of Northern Cyprus, to which is attached the text of a paper entitled "Opinion on the legal status in international law of the Turkish Cypriot and the Greek Cypriot communities in Cyprus".

I would be grateful if my letter and its enclosures could be circulated as a document of the General Assembly, under agenda item 47, and of the Security Council.

(Signed) Mustafa AKŞIN
Ambassador
Permanent Representative

ANNEX

Letter dated 31 July 1990 from Mr. Özer Koray to
the Secretary-General

Upon instructions from my government, I have the honour to enclose herewith the text of a paper entitled "Opinion on the Legal Status in International Law of the Turkish Cypriot and the Greek Cypriot Communities in Cyprus" written by eminent United States lawyer Mr. Monroe Leigh, dated 20 July 1990.

(Signed) Özer KORAY
Representative of the
Turkish Republic of
Northern Cyprus

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APPENDIX

Opinion dated 20 July 1990 on the legal status in international law of the Turkish Cypriot and the Greek Cypriot communities in Cyprus prepared by Mr. Monroe Leigh

I have been asked to give an opinion on the status in international law of the Turkish Cypriot and Greek Cypriot communities in Cyprus. Negotiations concerning the relationship between the two communities in Cyprus have for some time been taking place under the auspices of the Secretary-General of the United Nations. After a review of the historical and legal situation of Cyprus, it is my opinion that the Greek Cypriot and Turkish Cypriot régimes participating in these negotiations, and the respective communities which they represent, are presently entitled to exercise equal rights under international law, including rights of self-determination.

Before considering in detail the legal position of the Greek and Turkish Cypriots, I wish to make an important point about my use of terminology in this opinion. I understand that there has been much discussion between Mr. Denktas, President of the Turkish Republic of Northern Cyprus, Mr. Vassiliou, President of the (Greek) Republic of Cyprus, and the Secretary-General of the United Nations, Mr. Pérez de Cuéllar, about how to refer to the Greek Cypriots and the Turkish Cypriots, both during the course of their negotiations and also in the new political order which it is their aim to establish in Cyprus. In my opinion, whether these entities are referred to as communities, peoples, constituent parties, régimes, or by any other term, has no determinative or conclusive effect on their present international legal status.

Any analysis of the position of the Greek Cypriot and Turkish Cypriot peoples in international law must begin with the establishment on the Island of Cyprus, in 1960, of the Republic of Cyprus. The government of the Republic of Cyprus established in accordance with the 1960 Constitution succeeded the British colonial administration as the legitimate government of the territory comprising the island of Cyprus on 16 August 1990. 1/

The colony of Cyprus achieved its independence following the promulgation of three multilateral treaties, which in turn evolved from an earlier document known as the London Memorandum. 2/ Each treaty was signed by representatives of Britain, Greece, Turkey, and, for the Republic of Cyprus, by representatives of both the Greek Cypriot community and the Turkish Cypriot community, in their separate capacities. In the Treaty of Establishment it was contemplated that the Republic of Cyprus would have sovereignty over the territory of the former colony, with the exception of two British military installations. In the Treaty of Guarantee, the signatories undertook to recognize and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and "the state of affairs established by the Basic Articles of its Constitution." Finally, in the Treaty of Alliance, the signatories undertook to resist any attack or aggression directed against the independence or territorial integrity of the Republic of Cyprus. 3/

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The Constitution of Cyprus, which entered into force on the same day as the three treaties, was the product of two prior international agreements. The "Basic Articles" of the Constitution were first set out in the Zurich Agreement of 11 February 1959, between Greece and Turkey. These Basic Articles, which will be discussed below, largely determined the structure of the Government of the Republic of Cyprus, including the precise manner in which power would be shared by the Greek Cypriot and Turkish Cypriot communities. Representatives of the Greek Cypriot and Turkish Cypriot communities initialled the Agreement. In the Agreed Measures to Prepare for the New Arrangements in Cyprus, of 19 February 1959, Greece, Turkey and Britain agreed that a Joint Constitutional Commission composed of representatives of the Greek Cypriot and Turkish Cypriot peoples, Greece and Turkey would draw up a final Constitution incorporating the Basic Articles.

The Constitution thus developed effectively incorporated all of these international agreements. Article 181 of the Constitution declares that the Treaties of Guarantee and Alliance "shall have constitutional force." Article 182 of the Constitution provides that the Basic Articles, derived from the Zurich Agreement, "cannot, in any way, be amended, whether by way of variation, addition or repeal." Article 185 states that "the territory of the Republic is one and indivisible" and that total or partial union with any other State or separatist independence is excluded.

The international agreements by means of which the Republic of Cyprus was established as a sovereign state and under which the structure of its government was determined, as well as the Constitution resulting from them, recognized as binding among the parties the equal status of the Greek Cypriot and Turkish Cypriot communities, and their equal rights to an effective role in the government of their island and in determining their political futures. At the outset of the negotiations leading to the independence of Cyprus, the British Colonial Secretary, Mr. Lennox-Boyd, declared: "it will be the purpose of Her Majesty's Government to ensure that any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status." 4/ Therefore, in all of these documents rights to determine their political future were recognized in both the Greek Cypriot community and the Turkish Cypriot community, and they in turn pledged to exercise those rights jointly to create a single state governing all the territory and peoples of Cyprus.

The Basic Articles of the Constitution were carefully drafted to perpetuate both the recognized equality of the two communities and their obligation to share the attributes of sovereignty. The very first article provided that the President of the Republic would be a Greek Cypriot and the Vice-President would be a Turkish Cypriot. These officials were to be elected simultaneously but separately by majority votes of their respective communities. Unlike most presidents and vice-presidents, these two officers shared most essential executive powers. Most importantly, each was empowered to veto in whole or in part any law concerning foreign affairs, defense or security. Article 50. The Council of Ministers, the House of Representatives, the judiciary, the military and the civil service were likewise divided between the two communities in agreed proportions, "independent of

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any statistical data." Articles 46, 62, 123, 129, 153. In order to be enacted, most important laws required concurrent majority votes in the delegations of the two communities to the House of Representatives. Article 78. Taken together, these articles assured that neither community could take significant political action at the national level without the other's concurrence.

Concomitantly, a second group of constitutional articles gave the two communities extensive powers of self-government. All legislative power concerning matters of religion, education, personal status, municipal institutions and affairs was reserved to the exclusive competence of a Greek Cypriot and a Turkish Cypriot Communal Chamber, each elected by and ruling over its respective community. Each Communal Chamber could appoint judges to hear disputes arising out of matters under its competence and could raise taxes from its own people to support its separate programmes. Articles 86 and 87. In addition, separately governed Greek Cypriot and Turkish Cypriot municipalities were to be created in the five largest towns in Cyprus. Article 174.

The Republic of Cyprus was duly declared on 16 August 1960, and promptly recognized by the international community. The Republic was admitted to the United Nations on 21 September 1960, became an independent member of the British Commonwealth on 13 March 1961 and became the sixteenth member of the Council of Europe on 24 May 1961.

Unfortunately, this carefully balanced and internationally sanctioned régime lasted only a little over three years. On 30 November 1963, Archbishop Makarios, the duly-elected Greek Cypriot President of the Republic, proposed to the Guarantor powers thirteen amendments to the Cypriot Constitution. 5/ These proposed amendments - six of them to Basic Articles which were declared immutable by treaty and constitutional provision - had as their obvious purpose the elimination of the carefully negotiated balance of power between the two communities. 6/ When adopted these thirteen amendments would decisively shift the balance of power so as to favour the numerical majority - and hence assure Greek Cypriot rule. 7/

Civil disorder and armed violence broke out throughout the island. As an element of this crisis, the Turkish Cypriot members of the Government of the Republic of Cyprus either withdrew or more likely were forced from their offices. 8/ Shortly thereafter, the Greek Cypriot members of the government, purporting to act in legitimate exercise of their offices, enacted all thirteen amendments. They contended that the Turkish Cypriots could now only be re-admitted as partners in the administration if they accepted the amendments passed in their absence. 9/ Since the Turkish Cypriot members could not accept these illegal amendments, they never resumed their seats in the legislature.

The unilateral usurpation of authority by the Greek Cypriots was an obvious violation of the Constitution, as well as the treaty obligations accepted by the Greek Cypriot community. The Greek Cypriot régime had violated Article 182 of the Constitution, which stated that the Basic Articles "[could] not, in any way, be amended, whether by way of variation, addition or repeal," and which required concurrent two-thirds votes of the Greek Cypriot and Turkish Cypriot members of the House of Representatives for all other amendments. Their actions simultaneously

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contravened Article I of the Treaty of Guarantee, in which the Republic of Cyprus undertook "to ensure ... respect for its Constitution." Both Britain and Turkey issued diplomatic protests condemning the amendments as "contrary to the Constitution of the Republic of Cyprus, which is under the safeguard of international treaties." 10/ These 13 amendments, and the situation dependent upon them in the area under Greek Cypriot control, cannot therefore be validly accorded any international recognition.

From 1964 until the present, the Greek Cypriot régime has claimed to be the legitimate government of the Republic of Cyprus, with sovereign rights over the whole Island and all of its inhabitants. There is no legal basis in international law for such a claim. The formation of a régime founded on the unilateral usurpation of rights specifically reserved to the Turkish Cypriot people contravenes the plain language and obvious intent of the Treaty of Guarantee, the Zurich Agreement and the 1960 Constitution. The Greek Cypriot régime is neither the government of the "Republic of Cyprus" originally recognized by the community of nations in 1960 nor the legitimate successor of that government. The Greek Cypriot régime therefore had in 1964 and has today no right under international law to claim that it speaks for the Turkish Cypriot community or that it wields the sovereign powers that devolved upon the Republic of Cyprus in 1960.

Whatever the pretensions of the Greek Cypriot régime, the practical consequence of the events of 1963-1964 was the emergence of parallel administrative, judicial and legislative organs for each of the two peoples. Increasingly from 1964 onwards, the Greek Cypriot régime which purports to be the government of the Republic of Cyprus has not exercised over the Turkish Cypriot people any of the significant incidents of sovereign control reserved to the Government of the Republic of Cyprus in the 1960 Constitution. 11/ Instead, virtually all decisions governing the conduct of Turkish Cypriots have been made by the governmental institutions of the Turkish Cypriot community, and virtually all decisions concerning the conduct of Greek Cypriots have been made by the governmental institutions of the Greek Cypriot community. Physically, the two communities have become increasingly separated. 12/

This practice of parallel self-government and physical separation of the two Cypriot communities continued after the coup of 15 July 1974, staged by elements of the Greek Cypriot National Guard but foiled by the Turkish intervention, which began on 20 July. In the Geneva Declaration of 30 July 1974, the Foreign Ministers of Greece, Turkey and Britain noted "the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community." The Turkish intervention 13/ could not and did not alter the equal legal status of the two Cypriot communities, which derived from the earlier treaties and Constitution; nor was it the origin of the physical separation of the Greek and Turkish Cypriot peoples, who had been living as separate, self-governing communities since at least 1964.

The legal rights of the Turkish Cypriot community predate and were manifested by the proclamation in 1975 of the Turkish Federated State of Cyprus. The Turkish Cypriots considered it necessary to "creat[e] in their own region the legal basis of an order leading to the establishment of the future independent, Federal

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Republic of Cyprus" and reaffirmed that "their final objective is to unite with the Greek Cypriot community within the framework of a biregional federation." 14/ This exactly describes the form of the federal system toward which the leaders of the two communities, meeting under the auspices of the Secretary-General of the United Nations, subsequently agreed to negotiate in their Four Guidelines of 12 February 1977. 15/

Similarly, the long-delayed decision of the Turkish Cypriot Community in 1983 to declare itself the independent Turkish Republic of Northern Cyprus cannot lessen the rights to self-determination that the Turkish Cypriot people share equally with the Greek Cypriot people. For more than 20 years the Turkish Cypriot community has negotiated in good faith with representatives of the Greek Cypriot community to come to a lasting political solution to their island's troubles. The fact that the Turkish Cypriots restrained themselves for 20 years from proclaiming a separate Turkish Cypriot Republic was, under the circumstances, an act of continuing forbearance, the exhaustion of which can hardly be condemned, and stands in sharp contrast to the actions of the Greek Cypriot community in forcibly dismantling the constitutional Cypriot régime three years after their specific commitment to preserve it. 16/ The events of 1983 are not the source of the Turkish Cypriots' legal rights to determine their political future and to play an effective role in the government of the island, nor did they alter those pre-existing legal rights.

Much consequence has been drawn by some observers, and by the Greek Cypriot community, from the fact that numerous States have recognized the Greek Cypriot régime as the sole government of Cyprus. Although certain minimal criteria of statehood are required by customary international law, the recognition of governments is, none the less, an act of an inherently political, rather than legal, character. 17/ The mere fact of international recognition, no matter how widespread, cannot excuse or confer legitimacy upon the violations of both domestic constitutional law and international treaty law through which the Greek Cypriot régime usurped the name as well as the government of the "Republic of Cyprus," particularly since it never exercised sovereignty over the whole island. 18/

In any event, the most that can be said is that the international community has not withdrawn its recognition of the Republic of Cyprus established in 1960. The recognition of a government cannot automatically carry with it the recognition of all future governments of that state. 19/ The Greek Cypriot régime has assumed the title "Republic of Cyprus" but abandoned the substance. Since that time, no state has affirmatively recognized a "Greek Republic of Cyprus" based on the amended constitution. All they have done is continue to treat Cyprus as a single state.

When the subject of statehood, rather than recognition, is examined, it is apparent that the territory controlled by the Turkish Cypriot government is at present no less eligible for statehood than its Greek Cypriot counterpart. The traditional indicia recognized by customary international law for the existence of a state are: a permanent population, a reasonably well-defined territory, an effective government, and independence from foreign control of decision-making, particularly regarding relations with other states. 20/ "An entity that satisfies

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[these] requirements ... is a state whether or not its statehood is formally recognized by other states." 21/

Since the Turkish Republic of Northern Cyprus satisfies all the formal legal prerequisites for statehood, 22/ it is clear that international law does not forbid its recognition by other states. 23/

Even though resolutions of the Security Council of the United Nations have condemned or regretted certain events that have taken place on Cyprus, including the Turkish Cypriots' declaration of independence, the resolutions of the Security Council and the General Assembly have consistently recognized that, in the context of negotiations between the two Cypriot communities, they should and do bargain "on an equal footing." 24/ The Secretary-General has for many years offered his good offices to the two Cypriot communities to foster negotiations toward a mutually satisfactory settlement. Under his auspices, Greek Cypriot and Turkish Cypriot representatives have entered into several interim agreements indicating that neither community enjoys any special status relative to the other. 25/ In a recent resolution the Security Council reiterated its call for the two communities to "reach freely a mutually acceptable solution." 26/ Thus while the United Nations has not recognized the Turkish Republic of Northern Cyprus by admitting it to membership, it has always accepted the Turkish Cypriot community's right to determine its political future not only in conjunction with but also on an equal footing with the Greek Cypriot community.

Putting aside the talisman of recognition, it is clear that neither of the governments existing on the Island is qualified to assert that it is the government of the "Republic of Cyprus." But while the treaties and agreements of 1959-1960 cannot legally be disregarded by one party in its own interest, they can surely be replaced by the assent of both parties to a new, mutually satisfactory political order. Thus, sovereignty would devolve fully and legitimately on any new Cypriot government if the successor state or states were the product of a concurrent exercise of self-determination by the two communities superseding the joint exercise through which the 1960 Republic was established. 27/

In summary, the Turkish Cypriot community has a legal right to negotiate from a status of equality with the Greek Cypriot community in the current attempt, under the auspices of the Secretary-General, to reach a workable political solution for the unfortunate situation in Cyprus. The Greek Cypriot people has never had the right to assert sovereignty over the Turkish Cypriot people without their consent. Nor, from the moment the Greek Cypriots unilaterally rejected the constitutional basis on which the legitimacy of the Cypriot government rested in international law, has the Greek Cypriot régime had any right to assert sovereignty over the island. Since that time, practical necessity has created two governments on Cyprus. The rights of the peoples of the two communities to determine their own political futures have remained unchanged and in all respects are equal. The nations of the world, through resolutions of the Security Council and General Assembly of the United Nations, have recognized and consistently reaffirmed these rights, as have the two communities themselves in their interim negotiated agreements. Under these circumstances, international law does not sanction differential treatment of the two communities in the current negotiations or in any

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resulting settlement. If these efforts to establish a federal government of Cyprus - with the equal participation and mutual acceptance of the two peoples - should fail, each régime - the Turkish Cypriot no less than the Greek Cypriot - would be eligible for recognition as an independent state. Such recognition by other states would not then infringe any principle of international law.

Notes

1/ Sovereignty was formally passed from Britain to the Republic of Cyprus by the Cyprus Act, 1960, 8 and 9 Eliz. II, c. 52.

2/ The London Memorandum of 19 February 1959 was a collection of agreements signed by the Prime Ministers of Great Britain, Greece and Turkey "as the agreed foundation for the final settlement of the problem of Cyprus". These agreements included texts for the Treaties of Guarantee and Alliance (United Nations, Treaty Series, vol. 382 (1960), No. 5475 and ibid., vol. 397 (1961), No. 5712), the "Basic Structure of the Republic of Cyprus" (an outline of the essential provisions of the anticipated Cypriot Constitution), and declarations by representatives of the Greek Cypriot and Turkish Cypriot communities accepting the other documents "as the agreed foundation for the final settlement of the problem of Cyprus."

3/ Great Britain was not a signatory to the Treaty of Alliance.

4/ 562 Parliamentary Debate, House of Commons (5th ser.) 1267-68 (1956). He explained that in the event of any exercise of self-determination in the colony, "I cannot see how it is anything other than logical to grant a community with such close interests with Turkey, and only 40 miles away, the same rights as we are prepared to recognise should go to the Greek community." See ibid., pp. 1269-70. "In other words," he said, "Her Majesty's Government recognise that the exercise of self-determination in such a mixed population must include partition among the eventual options." See ibid., pp. 1267-68. For a further illustration of this point of view, see Blay, "Self-Determination in Cyprus: The New Dimensions of an Old Conflict", 10 Australian Yearbook of International Law 67, 71-72 (1984) (describing this speech as illustrative of an "implied concept of double self-determination for Cyprus").

5/ The text of these proposed amendments is most conveniently set out in Ehrlich, "Cyprus, the 'Warlike Isle': Origins and Elements of the Current Crisis", 18 Stanford Law Review 1021, 1043 n. 95 (1966).

6/ That the amendments were in fact intended to eliminate the constitutional balance of power has received confirmation in published accounts of the "Akritas Plan". The Akritas Plan was first publicized in the Greek Cypriot newspaper Patris on 21 April 1966. According to J. Reddaway, this plan was a blueprint for securing Greek dominance and suggests that one of the goals of the amendments was to ensure the withdrawal of the Turkish Cypriots from their role in the government established by the Constitution. J. Reddaway, Burdened with Cyprus, pp. 133-34 (1986). While the authenticity of the plan has been questioned, Glafkos Clerides, then Greek Cypriot President of the House of Representatives, confirmed it as

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genuine in an interview with Richard Patrick in 1971. R. Patrick, Political Geography and the Cyprus Conflict (1976).

7/ The government of Turkey immediately rejected the proposal. The Times (London), 7 December 1963, p. 7. Archbishop Makarios refused to accept any rejection by the Turkish Cypriots. The Times (London), 24 December 1963, p. 6.

8/ Exactly how the Turkish Cypriot members of the government were removed is a matter of historical dispute. Some sources claim that they voluntarily walked out in protest. See, e.g., Blay, supra note 4, p. 77 ("When the Turkish Cypriots withdrew from the government in the 1963-1964 crisis ..."); Evivriades, "The Legal Dimension of the Cyprus Conflict", 10 Texas International Law Journal 227, 247 (1975) ("The Turkish Cypriots, alleging a preconceived Greek plan for their extermination, withdrew from the government and barricaded themselves in their own neighborhoods, refusing to allow intercourse with the Greek Cypriots unless their constitutional rights were strictly observed."). Others claim that they were forcibly removed from their offices by the Greek Cypriots. See, e.g., M. Tamkoc, The Turkish Cypriot State: The Embodiment of the Right of Self-Determination 74 (1988) ("This was a peculiar, probably a unique, takeover of the government of a State, because the governing leadership dislodged their colleagues from office by brute force, colleagues who had as much right as they to manage the affairs of a functionally federated State."); N. Ertekun, The Cyprus Dispute and the Birth of the Turkish Republic of Northern Cyprus 11 (2nd ed. 1984) ("All Turkish Cypriots were physically barred from taking part in the administration of the Island."). Still other sources admit that they do not know the truth. See, e.g., Wolfe, "Cyprus: International Law and the Prospects for Settlement", 84 Proceedings of the American Society of International Law 107, 109 (1984) ("Turkish Cypriot leaders withdrew or were forced from government ...").

Whatever the reason for their physical absence, it is clear that they did not formally resign their offices. Dr. Kutchuk continued to identify himself as the Vice-President of the Republic of Cyprus, although in 1965 the "Government ... stated that it no longer recognized Dr. [Katchuk] in his capacity as Vice-President." See report of the Secretary-General on recent developments in Cyprus (S/6569, para. 10) (29 July 1965).

9/ See report of the Secretary-General on recent developments in Cyprus (S/6569, para. 11) (29 July 1965) (noting that Mr. Clerides, President of the House of Representatives, "made it plain [to Turkish Cypriot members seeking readmission to the House] that, unless [the Turkish Cypriots agreed to four preconditions, including acceptance of laws passed in their absence abolishing the constitutional requirement of separate majorities], he would not permit the Turkish Cypriot members to attend the House. Mr. Clerides also stated that the constitutional provisions concerning promulgation of the laws by the President and the Vice-President were no longer applicable. He subsequently stated that in his opinion the Turkish Cypriot members had no legal standing any more in the House.").

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10/ Note dated 27 July 1965, from the Turkish Embassy in Nicosia to the Minister for Foreign Affairs of Cyprus (concerning the amendment to the electoral law abolishing separate Greek and Turkish Cypriot electoral rolls). See note dated 24 July 1965 from the British High Commission in Cyprus to the Government of Cyprus (objecting to the passage of the law providing for elections without divided electoral rolls by stating that "[a]s one of the Guarantor Powers the British Government protests against this action which is in breach of basic articles of the Constitution of the Republic of Cyprus."). These diplomatic notes and the Greek Cypriot replies rejecting both notes are reprinted in United Nations document S/6569/Add.1 (5 August 1965).

11/ See report of the Secretary-General on the United Nations Operation in Cyprus (S/6228, para. 203) (11 March 1965) (noting the "inaccessibility of the areas inhabited entirely by Turkish Cypriots to the Government's law-enforcing authorities and officials. The organs of the State are thus powerless in these areas to administer justice."). For example, this government has never collected any taxes from the Turkish Cypriot community. See *ibid.*, paras. 178-181 (describing the Turkish Communal Chamber's withdrawal of authority from the Cyprus Inland Revenue Department to collect the Chamber's income tax from Turkish Cypriots, effective 18 February 1965). Likewise, its courts have not judged cases involving Turkish Cypriots. See *ibid.*, para. 193 (In Nicosia "[t]he work of the courts, however, has been almost entirely confined to those cases where the parties involved are Greek Cypriots. Only Greek Cypriot litigants and Greek Cypriot counsel have attended the courts to transact business.").

12/ This physical separation began well before the 1974 Turkish intervention. See report of the Secretary-General to the Security Council on United Nations operations in Cyprus (S/5950, paras. 29-30) (10 September 1964) (describing the creation of Turkish Cypriot enclaves after December 1963, especially concentrated in Nicosia and its northern suburbs, a narrow strip astride the road from these suburbs to Kyrenia, the town of Louroujina, the Lefka region and two beachheads at Kokkina and Limnitis); report of the Secretary-General on recent developments in Cyprus (S/6569 and Add.1 and 2) (29 July 1965) (describing a reference made by Mr. Clerides, the Greek Cypriot President of the House of Representatives, to "Turkish [Cypriot] areas").

13/ Although legal commentators disagree on the legitimacy under international law of the extension of the Turkish intervention in August of 1974, it remains a fact that the situation was under close scrutiny by the Security Council and that body did not at any point determine that the Turkish action was a breach of the peace or an act of aggression. The furthest that the Council went was to express concern at the situation resulting from "military operations" (a term broad enough to include the actions of Greek as well as Turkish forces) "which constituted a most serious threat to peace and security in the Eastern Mediterranean area" and to record "its formal disapproval of unilateral military actions undertaken against the Republic of Cyprus" (again a term which, being used in the plural, was wide enough to cover Greek no less than Turkish military action). United Nations Security Council resolution 360 (1974). In any case, the

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important point is that the Turkish intervention is not the source of the Turkish Cypriots' rights to determine their political future. Nor should the Turkish Cypriot people be chargeable with responsibility for the actions of the government of Turkey in 1974 under its interpretation of its responsibilities as a Guarantor Power under the 1960 treaty.

14/ S/11624, annex II (1975) (entitled "Statement by Vice-President Denktas dated 13 February 1975").

15/ See S/12323. Guideline 1 reads: "We are seeking an independent, non-aligned bi-communal Federal Republic." Guideline 2 anticipated that there would be "territory under the administration of each community."

16/ Indeed, the parliamentary resolution declaring the foundation of the Turkish Republic of Northern Cyprus contained specific assurances that the "proclamation of the Turkish Republic of Northern Cyprus will not hinder the two equal Peoples and their administrations from establishing a new partnership within the framework of a genuine federation". Declaration of Independence and Resolution Adopted by the Turkish Cypriot Parliament on 15 November 1983, para. 22 (b).

17/ United States courts have consistently ruled that whether a government should be recognized is a political question whose determination is within the exclusive prerogative of the Executive branch. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410 (1964); National City Bank of New York v. Republic of China, 348 U.S. 356, 358 (1955). See Restatement No. 204 ("Under the Constitution of the United States, the President has exclusive authority to recognize or not to recognize a foreign state or government, and to maintain or not to maintain diplomatic relations with a foreign government.").

International legal scholars likewise agree that recognition is a political act. See, e.g., B. Jankovic, Public International Law 100 (1984) (translation from the 5th Serbocroatian edition by M. and B. Milosavljevic) ("It is obvious that in granting individual recognition states are motivated by their own political interests, and that recognition is basically a political act."); I. Brownlie, Principles of International Law 94 (3d ed. 1979) ("Recognition, as a public act of state, is an optional and political act and there is no legal duty in this regard."); Akehurst, A Modern Introduction to International Law 63 (3d ed. 1977); G. von Glahn, Law Among Nations 91 (3d ed. 1976); J. Brierly, Law of Nations 140 (6th ed., Waldock, 1963).

18/ See J. Brierly, supra note 16, p. 147 ("the recognizing state is not concerned with the question whether the state of things which it is recognizing is legal by the national law of another state"); id. pp. 148-49 ("On the declaratory view of the nature of recognition its granting or withholding does not, so far as international law is concerned, affect the status in law of the state or government to which it is accorded or from which it is withheld.").

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19/ Recognition of a State and recognition of a particular governmental régime are two different things. See I. Brownlie, Principles of Public International Law 95 (3rd ed. 1979) ("Non-recognition of a particular régime is not necessarily a determination that the state represented by that régime does not qualify for statehood."); Restatement No. 203, comment a (while a state cannot recognize a régime as a government without thereby accepting the statehood of the entity which the régime claims to be governing, "[a] state can, however, recognize or treat an entity as a state while denying that a particular régime is its government"). It follows therefore that a state may derecognize a régime as the government of another state without derecognizing the state it governs and without formally recognizing any other government. Restatement No. 203, comment f.

20/ See Montevideo Convention on the Rights and Duties of States, 26 December 1933, 165 League of Nations Treaty Series 19; Restatement No. 201 and comments a-e; I. Brownlie, supra note 16, pp. 74-75.

21/ Restatement No. 202. See also J. Crawford, The Creation of States in International Law 23 (1979) ("... in principle the denial of recognition to an entity which otherwise qualifies as a State cannot entitle the nonrecognizing States to act as if the entity in question was not a State."); J. Brierly, Law of Nations 139 (6th ed., Waldock, 1963) ("A state may exist without being recognized, and if it does exist in fact, then, whether or not it has been formally recognized by other states, it has a right to be treated by them as a state.").

22/ The Turkish Cypriot community has established a republican government exercising control over the northern third of the island of Cyprus. Although Turkish troops remain on Cypriot soil, the continuing presence of troops from a friendly state for the purpose of preserving the rights of the Turkish Cypriot people under the 1960 treaties is in no way inconsistent with statehood. The fact that the Turkish intervention was made pursuant to the terms of the 1960 treaties makes the case even stronger.

23/ "In most instances, the issue [whether a state should not be recognized because it acquired the attributes of statehood through the threat or use of force in violation of the United Nations Charter] is not subject to authoritative determination" and states, "particularly after a lapse of time, have been willing to accept a fait accompli." Restatement No. 202, Reporter's Note 5. For example, the international community was divided in its opinion on the legality of India's intervention in Bangladesh, but states have generally recognized Bangladesh as a state and Bangladesh has been admitted to the United Nations. Id. See infra, text accompanying note 24. Similarly, Brierly has stated that "[w]hether or not a new state has actually begun to exist is a pure question of fact; and as international law does not provide any machinery for an authoritative declaration on this question, it is one which every other state must answer for itself as best it can." J. Brierly, supra note 16, p. 137.

24/ See, for example, the following documents: United Nations General Assembly resolution 3212 (XXIX) (1976) (considering the "constitutional system of

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the Republic of Cyprus [to concern] the Greek Cypriot and Turkish Cypriot communities," commending "the contacts and negotiations taking place on an equal footing ... between the representatives of the two communities and call[ing] for their continuation"); United Nations Security Council resolution 649 (1990) (calling on the leaders of the two communities "to reach freely a mutually acceptable solution" and "to co-operate, on an equal footing, with the Secretary-General in completing" an outline of such a solution); General Assembly resolution 34/30 (1979) (calling for the resumption of the negotiations "between the representatives of the two communities, to be conducted freely on an equal footing"); General Assembly resolution 3395 (XXX) (1975) (same). See also "Opening statement delivered by the Secretary-General on Monday, 26 February 1990, at 12.15 p.m.", in report of the Secretary-General on His Mission of Good Offices in Cyprus (S/21183, annex 1) (8 March 1990) ("The mandate given to me by the Security Council makes it clear that my mission of good offices is with the two communities. My mandate is also explicit that the participation of the two communities in this process is on an equal footing. The solution that is being sought is thus one that must be decided upon by, and must be acceptable to, both communities.").

25/ See the following documents: Four Guidelines of 12 February 1977 (See S/12323) (declaring the goal of a bi-communal Federal Republic and recognizing that the two communities will administer different territories); Ten-Point Agreement of 19 May 1979 (See A/34/620 and Corr.1, annex V, para. 2) (reaffirming the 1977 Guidelines).

26/ United Nations Security Council resolution 649 (1990) (calling for a solution "providing for the establishment of a federation that will be bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects in line with the present resolution and the[] 1977 and 1979 high-level agreements").

27/ The Vienna Convention on the Law of Treaties provides that treaties can be terminated by mutual consent of the parties. Vienna Convention on the Law of Treaties, 23 May 1969, art. 54, 1155 United Nations Treaty Series 331 (1969) ("The termination of a treaty or the withdrawal of a party may take place: ... (b) at any time by consent of all the parties after consultation with the other contracting States.").

At some point in the future, however, it may become apparent that no agreement on a successor régime can be reached and that further negotiations would be futile. Should this ever be the case, the only workable solution - one which international law would not, at that point, forbid - might be partition of the island, a solution considered by the British Colonial Secretary in 1956. See discussion supra, note 4.
