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**QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS IN ANY PART OF
THE WORLD, INCLUDING THE QUESTION OF
HUMAN RIGHTS IN CYPRUS**

Note by the Secretary-General*

1. In decision 2004/126, the Commission on Human Rights decided, without a vote, on 21 April 2004 to retain on its agenda sub-item (a), entitled “Question of human rights in Cyprus”, of the item entitled “Question of the violation of human rights and fundamental freedoms in any part of the world”. It also decided to give the item due priority at its sixty-first session, on the understanding that action required by previous resolutions of the Commission on the subject would continue to remain operative, including the request to the Secretary-General to submit a report to the Commission regarding their implementation.
2. The annexed report, prepared by the Office of the High Commissioner for Human Rights, is herewith transmitted to the Commission pursuant to this decision. It covers the period up to 31 December 2004 and provides an overview of human rights issues in Cyprus based on such information as is available.

* The present document was submitted late in order to incorporate the most recent information.

Annex

REPORT ON THE QUESTION OF HUMAN RIGHTS IN CYPRUS

I. OVERVIEW

1. As of 31 December 2004, Cyprus remains divided, with a buffer zone maintained by the United Nations Peacekeeping Force in Cyprus (UNFICYP), set up in 1964. The UNFICYP mandate has been expanded and extended by successive Security Council resolutions. On 11 June 2004, the Security Council decided to extend the mandate for a further period ending 15 December 2004 and to consider the Secretary-General's recommendations in his review of the Force and to act on them within one month of receiving them. In August 2004, a United Nations team conducted a review of the UNFICYP mandate, force levels and concept of operations, as a result of which the size of the Force was reduced from 1,220 to 860 peacekeepers. On 22 October, the Security Council, in resolution 1568 (2004), decided to extend the mandate of UNFICYP for a further period ending 15 June 2005.

Good offices mission

2. On 13 February 2004, following meetings organized by the Secretary-General between the Greek Cypriot and Turkish Cypriot leaders and representatives of Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland, the parties committed to a three-phase process leading to a referendum on a finalized plan before 1 May 2004. With agreement clearly not achievable, the process moved to phase 3 and, on 31 March, the Secretary-General presented a finalized plan, on which referenda were held on 24 April 2004.^a

3. In the referenda, on the Greek Cypriot side, the plan was rejected by 75.8 per cent of voters, while on the Turkish Cypriot side the plan was approved by 64.9 per cent of voters. In his report to the Security Council on his mission of good offices dated 28 May 2004 (S/2004/437), the Secretary-General, inter alia, underscored the need for a comprehensive settlement of the Cyprus problem, while noting that the outcome of the referenda had resulted in a stalemate and that neither of the Cyprus parties had made a proposal to resolve the impasse. He therefore did not see any basis for resuming his good offices as long as the stand-off remained (para. 91). He also noted that the rejection of the settlement plan represented "another missed opportunity" to resolve the Cyprus problem. While noting that the decision of the Greek Cypriots to vote no on the plan had to be respected, the Secretary-General expressed the hope that the Greek Cypriots would reflect on the outcome of that process. He also believed that the members of the Council should encourage the Turkish Cypriots, and Turkey, to remain committed to the goal of reunification and "[i]n this context and for that purpose and not for the purpose of affording recognition or assisting secession", he expressed the hope that the Security Council could give a strong lead to all States to cooperate bilaterally and in international bodies "to eliminate unnecessary restrictions and barriers to lead the effort that have the effect of isolating the Turkish Cypriots and impeding their development", deeming such a move consistent with Council resolutions 541 (1983) and 550 (1984) (para. 93).

Membership in the European Union

4. On 1 May 2004, Cyprus formally joined the European Union (EU). However, the rejection of the comprehensive settlement plan by the Greek Cypriots meant that only the area under the control of the internationally recognized Government of Cyprus would enjoy the benefits of EU membership. Immediately following the referendum, the European Commission pledged to release €259 million - originally earmarked to support a political settlement - to the Turkish Cypriots to assist in overcoming their economic isolation.

5. In this context, the intra-island trade of certain goods began in August 2004 pursuant to an EU regulation. Further, the European Commission recommended to the Council of the European Union the opening of direct trade between the north of the island and the EU. Opposing this recommendation, the south proposed its own set of economic and confidence-building measures, which were largely dismissed by the Turkish Cypriots. In December 2004, the European Parliament endorsed the creation of a financial instrument to provide €259 million in financial support to the Turkish Cypriot community until 2006. As of the end of 2004, the stalemate in the EU Council concerning financial assistance and direct trade persisted.^b

II. HUMAN RIGHTS CONCERNS

6. The human rights concerns in Cyprus derive predominantly from the persisting division of the island which, in the absence of a political settlement, remains unresolved. The division of Cyprus has consequences for the enjoyment, on the whole island, of a number of human rights, including freedom of movement, freedom of association, property rights, freedom of religion, family rights, freedom of expression, voting rights, the right to education, the right to health, and human rights issues pertaining to the question of missing persons.

7. Over the past several years, United Nations treaty bodies have noted in their concluding observations and recommendations on the reports of Cyprus that the impact of the division of the island constitutes a serious obstacle to the enjoyment of human rights, most recently the Committee on the Rights of the Child in 2003 (see, inter alia, E/CN.4/2004/27, paras. 6-7).

Freedom of movement

8. In April 2003, the Turkish Cypriot authorities had partially eased restrictions on freedom of movement to the area under their control. The freedom of movement has also been facilitated by Greek Cypriot willingness to accept entry to the south by EU nationals and Cyprus visa holders who enter the island through ports in the north. For their part, in May 2004, Turkish Cypriot authorities agreed that Greek Cypriots could show identity cards, rather than passports, for crossing purposes.

9. With regard to the freedom of movement, Greek Cypriots are now permitted to enter the northern part of the island for an unlimited period on the condition that they reside in a hotel and not with Greek Cypriot community members unless they are "close relatives". While the partial opening of the "Green Line" has enabled Cypriots to go to places where they resided before 1974, they are not allowed to either recover or freely dispose of their property.

10. As a further goodwill gesture, after a gap of five years, the Government of Cyprus provided land passage to Turkish Cypriots for an annual visit to Kokkina.^c In the same vein, in August, Turkish Cypriot authorities allowed the opening of a secondary school in a Greek Cypriot enclave and the resumption of religious services in the St. Mamas church at Morphou, both for the first time since 1974.

11. An issue related to freedom of movement, as well as freedom of association, is that of participation in intercommunal activities by members of both the Turkish Cypriot and Greek Cypriot communities. During the reporting period, UNFICYP continued to facilitate bicomunal meetings. In addition, bicomunal projects and cultural activities aiming to promote tolerance and a multicultural society in Cyprus have been supported by the Delegation of the European Commission to Cyprus.

Freedom of religion

12. With respect to freedom of religion, there have been improvements as regards reciprocal visits to places of worship due to the partial easing of restrictions on freedom of movement. After the Turkish Cypriot authorities' decision to relax crossing restrictions in April 2003, Greek Cypriots reported easy access to religious sites in the north, including Apostolos Andreas monastery. Turkish Cypriots were equally able to visit religious sites, including Hala Sultan Tekke mosque, in the government-controlled area. The generally amicable relationship among religions in Cypriot society contributed to religious freedom; however, there were a few reports of vandalism of unused religious sites. Maronites and Armenians are still not allowed to visit religious sites in the north which are located near military zones.

The right to housing and property

13. In the northern part of the island, Turkish Cypriot authorities reportedly continued to restrict Greek Cypriots from bequeathing their property if their heirs are not resident in the north. Since the easing of restrictions on movement, property of enclaved Greek Cypriots having left for the south has been placed in the "custody" of the Turkish Cypriot authorities, while previously property had been confiscated. An Independent Judicial Commission was established by the Turkish Cypriot authorities in June 2003 and is empowered to resolve property disputes that have arisen since 1974 in the northern part of the island. Accordingly, persons wishing to approach the Commission shall have unrestricted right of access to the northern part of the island for the purposes of the relevant procedure. It should be underlined that it is not within the Commission's competence to provide redress to the owners of immovable property regarding the enjoyment of their property rights, but merely to deal with compensation. To date, no applications have been submitted to the Commission.

14. In August 2004, the Turkish Cypriot side eased restrictions on Maronites enjoying or selling their property in the north to persons other than Greek Cypriots. Turkish Cypriot property in areas under the control of the Government of Cyprus is administered by the Directorate for Turkish Cypriot property management under the Ministry of the Interior. In principle, Turkish Cypriots settling in the southern part of the island or having emigrated abroad prior to 1974 are entitled to recover their property (although some unwarranted delays in the processing of reinstatement applications have been noted by the Ombudsman). On the other hand, Turkish Cypriots who have settled in the northern part of the island still

legally own their assets in the south, and are not entitled to dispose of them. The partial opening of the “Green Line” did not fundamentally alter the situation concerning property rights.

15. In a landmark decision of September 2004, the Supreme Court,^d of the Republic of Cyprus ordered the return of Turkish Cypriot property in Episkopi that had been granted to two Greek Cypriot women refugees since the 1974 Turkish intervention. According to the facts of the case, the Turkish Cypriot applicant went to the south in September 2002 where he had lived prior to the 1974 intervention. In a letter to the Ministry of the Interior, the applicant requested that his property be returned to his possession. However, this request was turned down by the Ministry, stating that “[d]ue to the Turkish invasion of 1974 and the displacement of population, all Turkish Cypriot properties have come under the protection of the Interior Minister in a law passed in 1991, pending resolution of the Cyprus problem”. In its ruling, the Supreme Court found no plausible explanation as to why there should be discrimination between the members of the then Turkish Cypriot community who had their usual place of residence in the areas controlled by the Republic on 1 July 1991 when the law took effect, and those who did not. Further, the Court found that such a distinction could not stand, as it would constitute an acceptance of the partition of the population imposed by the Turkish invasion and occupation forces and a refusal to recognize the property rights of those members of the Turkish community who, in opposition to the segregation of the population, desired to return to their homes and properties in the areas controlled by the Republic. In this connection, Cyprus President Tassos Papadopoulos stated that the Government would not leave Greek Cypriot “refugees” exposed, following this decision of the Supreme Court.

Freedom of expression and right to information

16. There have been reports about the continuing persecution of Turkish Cypriot journalists in the northern part of Cyprus. A number of Turkish Cypriot journalists working and writing in opposition Turkish Cypriot newspapers were taken before Turkish military courts and charged with insulting and undermining the so-called “Turkish Republic of Northern Cyprus”, and the Turkish army and the prosecutor asked for up to 21 years’ imprisonment for each one. There has, however, been a change in the Turkish Cypriot legal code pertaining to this issue. As of 1 October 2004, civilians can no longer be tried in military courts except in cases of espionage or physical attacks against soldiers or military infrastructure.

17. Others were threatened with death or attacked and beaten by gangs of the Turkish terrorist organization “Grey Wolves”, aiming at silencing them.

The right to vote and participate in political affairs

18. In its judgement in *Aziz v. Cyprus* of 22 June 2004 (application No. 69949/01), the European Court of Human Rights overruled an official policy of the Republic of Cyprus whereby Turkish Cypriots could not be registered on the Greek Cypriot electoral roll. The Court noted that the difference in treatment in the present case resulted from the very fact that the applicant was a Turkish Cypriot and emanated from the constitutional provisions regulating the voting rights between members of the Greek Cypriot and Turkish Cypriot communities that had become impossible to implement in practice, and constituted a violation of article 14 of the European Convention on Human Rights (prohibition of discrimination), in conjunction with article 3 of Protocol No. 1.

19. Greek Cypriots and Maronites living in the north cannot participate in Turkish Cypriot elections; they are, however, eligible to vote in Greek Cypriot elections, but must travel to the south to exercise that right.

The right to education and the right to health

20. With regard to the right to education, Turkish Cypriot authorities reversed their stand and allowed a secondary school to operate at Rizokarpazo for Greek Cypriot children where 12 pupils have been studying since September 2004 in the three secondary grades. Despite this positive development, Turkish Cypriot authorities refused to countenance a request to refurbish a facility for the accommodation of teachers during that academic year. Similarly, Turkish Cypriot objection to certain content in textbooks led to the removal of pages from 13 of the 72 books intended for the secondary school. Meanwhile, the Turkish Cypriot side sought the good offices of UNFICYP to set up a Turkish-medium primary school at Limassol where some 70 Turkish Cypriot children attend school in the Greek language. Further, an estimated 30 Roma Turkish Cypriot children do not attend school. UNFICYP supports education in the mother tongue and has accordingly recommended to the Government the opening of a Turkish-medium primary school at the earliest opportunity. At the Government's request, UNFICYP has begun interviewing the parents of the Turkish Cypriot pupils at Limassol to determine the extent of their need in this regard. Parents of a dozen pupils have already indicated to UNFICYP that they would prefer Turkish-language instruction for their children.

21. As far as the right to health is concerned, Turkish Cypriot authorities continue to disallow doctors from the south to visit the Greek Cypriots and Maronites saying that the north's medical facilities are "adequate" to take care of these communities.

Missing persons

22. For the first time in nearly five years, the Committee on Missing Persons in Cyprus (CMP) convened on 30 August 2004 at the Ledra Palace. According to a press release issued by the Committee on 30 August 2004, the Greek Cypriot member of the CMP, Elias Georgiades, and the Turkish Cypriot Member, Rustem Tatar, reconfirmed their full commitment to the ultimate goal of resolving the humanitarian issue that equally affects the families in both communities.^e

23. From 24 September until the end of October 2004, the CMP continued to work intensively, meeting at least once or twice every week. At the end of its meeting on 25 October 2004, the Committee stated in a press release that "it reached an agreement in principle with the INFORCE Foundation, a non-profit forensic science organization based in the United Kingdom, to undertake exhumation work in Cyprus". The Committee "is currently preparing relevant information for submission to INFORCE to assist it in the detailed planning of the exhumation work to be undertaken", adding that "a comprehensive budget for the project is expected from this institution to enable the CMP to conclude its agreement with INFORCE". It concluded that "after finalization of the agreement with INFORCE, this foundation is expected to commence survey work on the burial sites, in preparation for exhumations and identification of Greek Cypriot and Turkish Cypriot missing persons in Cyprus".

III. CONCLUSION

24. Despite some recent positive developments, the persisting de facto partition of the island constitutes a major obstacle to the enjoyment of human rights by all Cypriots throughout the island. The situation of human rights in Cyprus therefore would greatly benefit from the achievement of a comprehensive settlement of the Cyprus problem.

Notes

^a Like earlier versions of the settlement plan, the revised document of 31 March 2004 provides for the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the International Covenant on Civil and Political Rights to be an integral part of the Constitution, and for the prohibition of discrimination against any person on the basis of his or her gender, ethnic or religious identity, or internal “constituent state” citizenship status. The document provides for freedom of movement and freedom of residence other than expressly provided to the contrary. It also contains provisions for the protection of the rights of the Maronite, Latin and Armenian minorities, and of Greek Cypriot residents of certain villages to be within the Turkish Cypriot “constituent state” and Turkish Cypriot residents of certain villages to be within the Greek Cypriot “constituent state”. It proposes a comprehensive regime for dealing with properties affected by events since 1963, in accordance with international law, respect for the individual rights of dispossessed owners and current users, and the principle of bi-zonality; and for the relocation to adequate alternative accommodation of persons affected by territorial adjustment. The document also proposes that steps be taken to conclusively resolve the missing persons issue as well as establish an independent and impartial reconciliation commission to promote understanding, tolerance and mutual respect between Greek Cypriots and Turkish Cypriots which, inter alia, would have the effect of promoting a culture of respect for human rights.

^b In February 2005, the EU Council adopted the European Commission’s proposal to improve the so-called “Green Line Regulation” which would further facilitate the movement of goods and persons across the Green Line.

^c They were commemorating an August 1964 battle, which ended the most violent stage of the Cyprus inter-communal conflict.

^d September 2004 decision of the Supreme Court of Cyprus concerning Ari Mustafa, applicant.

^e The Committee on Missing Persons (CMP), established in 1981, is composed of three members. The Greek Cypriot and Turkish Cypriot sides each appoint a member. The Third Member is appointed by the United Nations Secretary-General, upon recommendation of the International Committee of the Red Cross. Since January 2000, there has been no Third Member, but the First Assistant to the Third Member of the CMP has continued to work with the two sides, as Acting Third Member, to overcome obstacles and enable the CMP to resume its activities and achieve its aims. During the period under review, the Third Member ad interim, continued to work with the two sides.
