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Letter dated 14 March 1990 from the Permanent Representative of
Turkey to the United Nations addressed to the Secretary-General

I have the honour to attach herewith a letter dated 14 March 1990 addressed to you by His Excellency Mr. Özer Koray, Representative of the Turkish Republic of Northern Cyprus.

I should be grateful if the present letter and its annex were circulated as a document of the forty-fourth session of the General Assembly, under agenda item 47, and of the Security Council.

(Signed) Mustafa AKSIN
Ambassador
Permanent Representative

ANNEX

Letter dated 14 March 1990 from Mr. Özer Koray addressed to the
Secretary-General

Upon instructions from my Government, I have the honour to enclose herewith the text of a paper entitled "Turkish Republic of Northern Cyprus - Opinion", written by eminent law professor E. Lauterpacht, C.B.E., Q.C., and dated 9 March 1990.

I should be grateful if the present letter and its appendix were circulated as a document of the forty-fourth session of the General Assembly, under agenda item 47, and of the Security Council.

(Signed) Özer KORAY
Representative

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APPENDIX

TURKISH REPUBLIC OF NORTHERN CYPRUS

OPINION

1. I have been asked to advise as a matter of urgency on the legal justification for the position taken on 28 February, 1990 by the President of the Turkish Republic of Northern Cyprus, Mr. Denktas, regarding the wording to be used to describe the participation by the Turkish Cypriots in any settlement that may be reached with the Greek Cypriots for the future government of Cyprus.

2. Mr. Denktas noted that whatever the words that may be used -- whether communities, peoples, peoples and communities, national communities, national groups, constituent parties, constituent partners, or partners -- they will not run counter to the view that each of the parties, in participating in the hoped-for settlement, is exercising its right of self-determination.

3. The reason for this concern lies in the objection of the Turkish Cypriot community to any words that may give rise to such implications as the following: that in these negotiations one group is legally superior or inferior to the other; that the Greek Cypriot community, although treated by the United Nations as "the Government of Cyprus", would by agreeing to a federal-type settlement be seen as in any way legally bestowing powers upon the Turkish Cypriot community; or that by entering into a settlement along the general lines contemplated the Turkish Cypriot community would in any degree be renouncing its legal and national identity.

4. The Secretary-General of the United Nations responded that "any change in terminology could alter the conceptual framework to which all have thus far adhered" and concluded that "we have an impasse of a substantive kind, which raises questions regarding the essence of the mandate of good offices given to me by the Security Council."

5. The question is, therefore, what is the correct interpretation of the mandate conferred upon the Secretary-General. This is essentially a matter of the interpretation of Security Council Resolution 367 (1975) of 12 March 1975 which, in paragraph 6, requested the Secretary-General "to undertake a new mission of good offices". In particular, what is the legal position of those to whom the Secretary-General was to address his mission?

6. The Resolution describes those to whom the Secretary-General is to render his good offices in three places: in paragraph 2, the Council regrets certain conduct "as tending to compromise the continuation of negotiations between the representatives of the two communities on an equal footing"; in paragraph 6, apparently referring to the same persons, the Resolution requires the

Secretary-General" to convene the parties under new agreed procedures"; and, in paragraph 7, the Security Council called upon "the representatives of the two communities to co-operate closely with the Secretary-General".

7. There appears to be nothing on the face of that language, taken by itself, to suggest that there is any inequality of status between the parties or that either of them is doing anything other than further exercising its right of self-determination by participating in the settlement negotiations.

8. If, as is correct in the process of interpretation, one looks to the background of the Resolution and to the manner in which it has subsequently been applied, one finds ample confirmation for this view.

9. So far as to background is concerned, it must be recalled that the emergence of Cyprus as an independent State in 1960 was an act of self-determination. The British Colonial Secretary, Mr. Lennox-Boyd, described the emerging situation in these terms in 1956: "... 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. In other words, Her Majesty's Government recognize that the exercise of self-determination in such a mixed population must include partition among the eventual options". (Statement in the House of Commons, 19 December, 1956.) This statement was confirmed by the Prime Minister, Mr. Macmillan, on 26 June, 1958, who also described the Colonial Secretary's assurances as "pledges".

10. The form taken by this act of self-determination was unique in character. Neither before nor since has the ending of a colonial situation been enshrined in a constitution that was guaranteed in treaty form on the plane of international obligation by the three Members of the United Nations most closely concerned and countersigned and adopted by the leaders of the two communities directly affected. This was an evident and necessary reflection of the uneasy relationship between two peoples divided deeply by religion, language and culture, and of the apprehension that each might seek a closer association with the country to which each had an affinity.

11. Three years later the Greek Cypriot community used its power to prevent the Turkish Cypriot community from playing its proper role in the Government of Cyprus. There is also uncontroverted and incontrovertible evidence that those who led this action had in mind a further breach of the Treaty of Guarantee, namely, union with Greece. Thus, not only did the Greek Cypriot community or, as it claims to be, the Government of the Republic of Cyprus break the Constitution and violate its pledged word in an absolutely fundamental way; it also repudiated a solemnly assumed treaty undertaking which formed an indispensable

element in any legal assessment of its position. Both the United Kingdom and Turkey protested.

12. The fact that States have been prepared to recognize and to accord a place in the United Nations to the constitutionally unlawful Greek Cypriot regime is comparable to the recognition, many times repeated in the history of international relations, of de facto governments that have assumed power after a successful insurrection and repudiation of constitutional norms. But that de facto acceptance by the international community could not, and did not, in any way expunge the international illegality or, even more to the point, deprive the Turkish Cypriot community of its entitlement, possessed in common with the Greek Cypriot community, to the enjoyment of its right of self-determination.

13. The subsequent condemnation in Security Council Resolution 541 (1983) of the exercise of this right by the establishment of the Turkish Republic of Northern Cyprus as a statal entity in Northern Cyprus responding to the factual division of the country and parallel to the one existing in Southern Cyprus is legally bewildering. If a balanced and proportionate reaction to the breach of the undertakings given in the Treaty of Guarantee is condemned by the United Nations, this sets at naught the value of any international guarantee, no matter by whom given.

14. Be that as it may, events subsequent to Resolution 367 confirm that for the purposes of the ensuing series of negotiations the two communities regarded themselves, and were regarded by the United Nations, as being equal in status and that no special rights were attributable to the Greek Cypriot regime by reason of its de facto local and international status. It is sufficient to list some of the most important texts that evidence this position; the High-Level Agreement between the leaders of the two communities, 1977 and 1979; the Vienna Working Points of 1984; the Draft Framework Agreement on Cyprus presented by the Secretary-General on 29 March, 1986; the Geneva Accord of 24 August, 1988; and the Opening Statement by the Secretary-General at the most recent round of talks on 26 February, 1990 when, in particular, he stressed that the relationship between the Greek Cypriot community and the Turkish Cypriot community "is not one of majority and minority, but one of two communities in the State of Cyprus" and that "the participation of the two communities is on an equal footing."

15. It need hardly be added that there is nothing in intervention by Turkey in 1974 that changes the legal position. This was a lawful exercise by Turkey of its rights as a guarantor under Article IV of the Treaty of Guarantee. That lawfulness was expressly acknowledged by the Standing Committee of the Consultative Assembly of the Council of Europe in a resolution of 29 July, 1974 which referred to the exercise by the Turkish Government of its "right of intervention in accordance with Article 4 of the Guarantee Treaty of 1960". The British Government, through not expressing positive agreement with that view, has never -despite repeated opportunities -denied it; and the Foreign Affairs

Committee of the British House of Commons has said in relation to the British Government's own position that "there can be no question that the Treaty makes it perfectly clear that there is a legal right to intervene". Clearly, what Britain is entitled to do, Turkey is equally entitled to do.

16. Nor is there anything in the situation that suggests that either side in concluding new arrangements would thereby be exhausting its inherent right of self-determination. The factor that must maintain the unity of an internationally and constitutionally re-established Republic of Cyprus must be the unwavering adherence of both sides to their promises, not the denial to either side of its right freely to dispose of its own future.

17. In the light of the above, it does not appear that there is any legal basis for objecting to the assessment of the position given by Mr. Denktas.

E. LAUTERPACHT, C.B.E., Q.C.

9 March, 1990.

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