STATEMENT BY TURKEY AT THE SIXTH COMMITTEE
UNDER AGENDA ITEM 78
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-EIGHTH SESSION
(2 NOVEMBER 2016)

Mr. Chair,

In our second and last statement under this agenda item we would like to address the topic "**Provisional Application of Treaties**".

We note the Fourth Report of the Special Rapporteur, Mr. Juan Manuel Gomez Robledo and thank him for his extensive work on this topic. Although Turkish law doesn't allow for provisional application of treaties, we believe that the study undertaken by the Commission, provides a useful source of information and guidance both for States which resort to provisional application, as well as those whose legislation do not permit the provisional application of treaties. Indeed provisional application provides a practical way in cases where it is not desired, for political or technical reasons, to await the completion of long ratification processes, and allows treaty obligations to be swiftly implemented.

In this regard, on draft guideline 7, according to which provisional application of a treaty produces the same legal effects as if the treaty were in force, it would be useful that the issue be dealt more in depth. We concur with the idea that a comparative analysis of conventional practice would assist in clarifying the matter.

Regarding draft guideline 10 on internal law and the observation of provisional application of all or part of a treaty, it is not clear whether the draft guideline refers to the fact that a state may not invoke the provisions of its internal law as justification for its failure to perform a treaty or whether it concerns provisions of internal law regarding the competence to agree to apply a treaty provisionally, as has been said by some members of the Commission. We believe that there is a need to clarify this issue, taking into account that internal law of many countries, including Turkey, does not provide for provisional application of treaties.

In light of the limited recourse to the method of provisional application, we positively consider the proposal by the Special Rapporteur to prepare model clauses, which could constitute a useful reference.

Lastly, on the Special Rapporteur's suggestion to revise the regulations on registration adopted by the United Nations General Assembly in 1946, in order to adapt them to the current state of practice relating to the provisional application of treaties, the Turkish delegation believes that, in any case, it would not be appropriate to use the Vienna Convention on the Law of Treaties as sole reference, not all member states being party to it. Moreover given that only a very small percentage of all treaties registered with the United Nations since 1945 have been subject to provisional application, we are not convinced of the necessity of such a study. This suggestion should be discussed once the work of the Commission is completed.

Mr. Chairman,

I would also like to say some further comments on the topic of "**Identification of Customary International Law**".

It is principally the practice of States that is to be taken into account in determining the existence and content of rules of customary international law. Therefore, we believe that elements ascertaining the

formation of a rule of international customary international law need to be carefully evaluated.

In this respect, regarding draft Conclusion 4 on Requirement of Practice, we would like to reiterate our view that a high threshold should be set on the evidentiary value of practice of international organizations with regard to formation and identification of customary international law. Therefore, we believe that paragraph (2) should be drafted in a more cautious manner, using the phrase "may contribute", rather than "contributes". Moreover, this term would also be more consistent with paragraphs 2 and 3 of draft conclusion 12.

On draft conclusion 11 relative to treaties, we agree with paragraph 2: a rule set forth in a number of treaties does not necessarily, indicate that the treaty rule reflects a rule of customary international law.

Lastly we concur with draft Conclusion 12 on resolutions of international organizations: indeed, resolutions adopted by an international organization or at an intergovernmental conference cannot of itself create a rule of customary international law.

Mr. Chairman,

The last topic we would like to address is **"jus cogens"**.

In the first place, it is worth recalling that Turkey had expressed reservations and objections vis-à-vis the concept of jus cogens during the negotiations of the Vienna Convention Law of Treaties. The inclusion of jus cogens in the Convention was one of the reasons why Turkey didn't become a party to the said Convention.

At the last session of the Sixth Committee, my delegation had expressed doubts and reservations on the need emanating from States with regard to the progressive development and codification of jus cogens and on

the necessity for the Commission to include the matter in its programme of work, given the insufficiency of state practice and the existence of diverging views regarding its formation and consequences. These doubts and reservations still remain valid today.

Against this background, we continue to believe that the Commission should adopt a prudent approach regarding jus cogens and deal with this matter cautiously. In this connection, regarding the outcome of the consideration by the Commission, we note that some draft conclusions have already been formulated, which we consider as being premature at this stage. The outcome of the work could remain an analysis, general overview of conceptual issues related to jus cogens.

In that respect we note the extensive first report of the Special Rapporteur Professor Dire Tladi, tracing the historical evolution of the concept.

However, on paragraph 39, we would like to point out that South Cyprus's contestation of the validity of the Treaty of Guarantee on the basis of article 4 of the said Treaty being in violation of peremptory norms is irrelevant.

The provisions of the Treaty of Guarantee and the rights and obligations provided therein for the Guarantor Powers cannot be construed as an example of either confirming or violating peremptory norms or jus cogens. Individual statements of States cannot alter this fact.

Although this is given in the report as an example to simply demonstrate the consciousness by member states regarding the existence of peremptory norms even before the Vienna Convention on the Law of Treaties we totally disagree on the appropriateness of the example itself. Therefore, we believe that this part of the report requires amendment.

I thank you for your attention.