



**STATEMENT BY TURKEY AT THE SIXTH COMMITTEE
AGENDA ITEM 81
REPORT OF THE INTERNATIONAL LAW COMMISSION
(Cluster III)
(1 NOVEMBER 2017)**

Mr. Chairman,

I would like to address following topics contained in the Report of the International Law Commission.

Chapter VIII

(Peremptory norms of general international law (*jus cogens*))

Mr. Chairman,

On the subject of peremptory norms of general international law, I would like to refer to the views expressed by my delegation in the past sessions of the Sixth Committee. Having carefully examined the reports prepared by the Special Rapporteur, we still are hesitant whether there is a need among states regarding codification or progressive development of the concept.

The second report of the Special Rapporteur seeks to set out the criteria for the identification of *jus cogens*, taking the Vienna Convention on the Law of Treaties of 1969 as a point of departure in developing the criteria.

We note that the Special Rapporteur has revised his proposal, so that the title of the topic be changed to “Peremptory norms of general international law (*jus cogens*)”. We believe this title is more consistent with article 53 of the 1969 Vienna Convention.

On the issue of whether an illustrative list of *jus cogens* norms should be developed, we favour an approach that addresses the way in which *jus cogens* rules to be identified. We do not see any benefit in listing examples of *jus cogens* norms in an annex, even if the list is illustrative and non-exhaustive. We also believe it would be time consuming for the Commission to under take the task of providing an illustrative list. Instead, we suggest that the Commission should agree on the methodology for the identification of *jus cogens*.

On the basis of his analysis, the Special Rapporteur proposed six draft conclusions. My Delegation's observations on the draft conclusions are as follows:

We believe the criteria for *jus cogens* stipulated in Draft conclusion 4 are in line with Article 53 of 1969 Vienna Convention.

In the view of my delegation, Draft conclusion 6 is reiterating Draft conclusion 4 in the sense that there had to be acceptance and recognition by the international community as a whole. Therefore, Draft conclusion 6 should be deleted or be further elaborated.

We also suggest paragraph 2 of Draft conclusion 7 be deleted, in order to maintain the clarity of paragraph 1. As foreseen in paragraph 1, we believe it is the acceptance and recognition of the community of States as a whole that is relevant in the identification of norms of *jus cogens*.

Chapter IX

(Succession of States in respect of State Responsibility)

On the topic of succession of states in respect of state responsibility, we would like to thank the Special Rapporteur, Mr. Pavel Sturma for his first report.

The divergent comments and observations in the first report as well as in the Commission's report have confirmed our stated concerns and hesitations expressed in the past sessions of the Sixth Committee in terms of complexity and immaturity of the subject matter.

Let me specify our position about the topic within the context of the first report.

First of all, the complexity arises from the fact that the topic consists of two components both of which are not comprehensively settled in the legal and

political context. It is not clear what proportion of this area is or should be the subject of international law, or is political. Thus, it is not convenient to be generalized or regulated in a certain way. Theoretical divergences between the views of the Special Rapporteur and some states confirm this vagueness about the synergy of the political and legal nature.

Concerning the references made in the first report to the outcomes of the Commission's earlier works in respect of state succession and state responsibility, we would like to point out the following:

As it may be recalled, the outcomes of Commission's earlier work on state succession have found limited support among states. Indeed, due to the prolonged reluctance of states to the articles on nationality of natural persons in relation to the succession of States, it has been postponed indefinitely by the Commission. Likewise, the Vienna Convention on Succession of States in Respect of Treaties dated 1978 is binding upon only a limited number of states whereas the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts is not yet in force. Therefore, those rules are far from being accepted as customary law or international norms reflecting general approach.

Although the Special Rapporteur refers to the lack of universal rules concerning state succession and argues that there are only several legal areas to which succession of states apply, he prefers to resort to main terms and definitions in the Conventions. He justifies it on the ground that the adoption of certain terms and definitions does not imply that all or most rules of the two Vienna Conventions are applicable to the present topic. He further adds that this question thus must be resolved not on the basis of the 1978 Vienna Convention but under the present topic.

On the other hand, it is also admitted that cases of state succession or certain agreements between states involving state succession, are mainly in respect of treaties rather than state responsibility. The initial picture drawn in the first report implies immaturity in the sense of the lack of concerted state practice which is necessary for codification. In this context, we are doubtful about the Special Rapporteur's goal defined as an outcome, including both progressive development of new norms and codification, could be achieved at the end of this process.

We are of the view that the uncertainty also prevails in the second component of the topic, namely "state responsibility for international wrongful acts" where fundamental concepts are not pinned down in international law. Unless conferred legal status by states, the 2001 Draft Articles on Responsibility

of States for Internationally Wrongful Acts cannot be taken as a sole basis for the codification of a new area. Consequently, we are of the opinion that if the Special Rapporteur wishes to use some of its articles selectively on the topic, than he needs to convince that the content of the selected draft article reflects a broad based acceptance of states in the particular cases of state succession. In this regard, further elaboration on this point is required.

Mr. Chairman,

The second proposal put forward by the Special Rapportuer is on the *default rules*. However taking into account that states' overall lingering disinclination to the 2001 Draft Articles regulating the state responsibility for international wrongful acts in general, we are not fully convinced, at the current stage of deliberations, whether the proposal regarding its specific aspect could gain broad support.

Chapter X

(Protection of the environment in relation to armed conflicts)

Mr. Chairman,

Turning to the topic of “Protection of the environment in relation to armed conflict”, my delegation would like to congratulate Ms. Marja Letho, for her appointment as the Special Rapporteur of the topic. We would also like to thank the Special Rapporteur, Ms. Marie G. Jacobsson, for her previous work on the protection of the environment during armed conflict.

As the new Rapporteur has recently been appointed, we prefer to provide our comments in the coming sessions after having analyzed the work to be submitted by the new Special Rapporteur together with the relevant Commission documents put forward hitherto. However, it suffices at this stage to draw the attention to the importance of coherence between the work undertaken so far on the topic and the future work to be embarked upon by the new Rapporteur. In this regard, we wish her every success for the completion of the work on this important aspect of international law.

Thank you.