



**STATEMENT BY TURKEY AT THE SIXTH COMMITTEE  
AGENDA ITEM 82  
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE  
WORK OF ITS SEVENTIETH SESSION  
Cluster III  
(Chapter IX, X and XI)  
(31 OCTOBER 2018)**

**Chapter IX**

**Protection of the environment in relation to armed conflicts.**

Mr. Chairman,

With regard to protection of the environment in relation to armed conflicts, I would like to congratulate the Special Rapporteur Ms. Marja Lehto for the appointment and also thank her for the first report with three draft principles to the topic that has already reached a quantitatively high size. This productivity is for sure commendable, but by the same token broadening the content to a highest extent abounding in articles as such, may adversely affect the intensity of the output as a whole.

What is more, the generalisation of some subjective views based on a singular document, or broadening of ruling of a judicial organ competent in a limited area to other fields, by analogy or by evolving interpretation could lead to inexact faulty assumption of no practical use, rather than efficient solution. Such areas as highly politically sensitive subjects specifically necessitate much more attention.

Furthermore, with a view to covering all aspects of the issue, some speedy conclusions in certain core, but ongoing grey areas, that is to say armed conflicts, occupation, should be avoided. Some broad and audacious interpretation, notwithstanding for purely environmental concerns, on those politically sensitive fields, such as protected zones, right to the administration of natural resources,

applicable legislation in an occupied territory of the last three draft principles, could be dissuasive.

We would hence call for a more cautious approach in those matters. In particular, the generous usage of some conceptual criterion, for instance “minimizing damage to the environment” which is debatable and need reification. Especially on some opposite criterion determined as a threshold, we are of the view that a consistently substantiated approach in so subtle issues among the principles, or else further explanation about the necessity of divergence, is needed.

Likewise, it might be useful to decelerate and contemplate on the feebly grounded aspects of the original topic as armed conflicts before spreading to other parts, such as law of occupation. We deem as early the timing, for expanding the scope to non-international armed conflicts being another immature topic at a relatively early stage, and underdeveloped than international armed conflicts.

Concerning the main point made by the Special Rapporteur in recourse to human rights law, and as regards the linking environmental law with law of armed conflicts across the bridge of human rights law, we consider that multiple links between international human rights law and environmental law asserted to be generally acknowledged by the Special Rapporteur is questionable in many aspects yet.

We are of the view that it is not an outweighed approach of international community. In order to rest on such a link in a legally foreseeable manner, instead of a selective analogy among different sources for idealistic purposes, the conjunctions together with the disjunctions between three topics should be endorsed, and set out by robust legal tools. On that account, the proclaimed correlation among three law fields calls for intense scrutiny.

Universal human rights are originally derived from individual rights and properly fortified by many conventions. Conversely, the acceptance of some group rights as human rights are very recent trend. The number or content, of third generation of rights including but not limited to environmental rights are treated among states variously in the national laws. Most states approach the universal nature and fundamental human rights characteristic in a cautious manner. It is evident from that this category of rights are devoid of solid legal instruments with a worldwide or general applicability. Aside from one or two conventions of a limited state parties, they are generally recognized in some aspirational soft-law documents yet.

Because collective development rights with respect to claims of groups against states are intensely debated topic and are not established worldwide in a

uniform manner, in their application even during peace time, it does not seem to be a viable and well-timed approach to extend it to the situations of armed conflicts or occupations, being other fiercely debated topics of international law. As a result, it is doubtful that whether to produce largely credible outputs. Namely draft principle 21 at the very outset seems to be regrettably an early indication of a general deficiency in convincing legal sources. It qualifies refraining of occupying powers from significant damage to the environment of another state, or to areas beyond national jurisdiction, as immediately an obligation. However, the most stringent stance the Special Rapporteur selected among others, apart from some court decisions, is attributed merely to the two conventions, those are UNECE Convention on Transboundary Watercourses and International Lakes, 1997 Convention on the Law of the Non-navigational Uses of International Watercourses, and the UNCLOS. Furthermore, the first two conventions without attracting a notable number of state parties themselves, are far from standalone providing a widely accepted general obligation, or a worldwide principle.

Special emphasis by the Special Rapporteur on the protection of water sources is very welcome. We would like to further it by remarking on the importance of water installations, as well as water resources. As affirmed by International Law Association Resolution on the Protection of Water Resources and Water Installations in Times of Armed Conflict of 1976 “Water supply installations which are indispensable for the minimum conditions of survival of the civilian population should not be cut off or destroyed. The destruction of water installations containing dangerous forces, such as dams and dykes, should be prohibited when such destruction may involve grave dangers to the civilian population or substantial damage to the basic ecological balance.”

Respectively, we would suggest that in parallel to natural resources, protection of water installations or similar artificial constructions to avail of natural resources, essential for inhabitants as much, would be endorsed and addressed in the next report, may be much better specifically in draft principles, too.

## **Chapter X**

### **Succession of States in respect of State responsibility**

We noted the second report of the Special Rapporteur Mr. Pavel Šturma and express our thanks to him for it. Needless to reiterate our general overview about outcome of the topic, I would prefer to mention a specific new approach to non-succession, proposed in the second report.

The Special Rapporteur put forward “*continuing state*” and “*successor state*” for distinctive criterion in determination of exception to the non-succession and responsibility for wrongful acts. It should be underlined that the continuity and succession of massive political and legal consequences are not definitely extricated from each other in legal terms yet, and are largely intertwined in many aspects. Each case of transition throughout the history emerged as a result of peculiar conditions and turned out contingently, with a lot of varieties from each other by specific political and legal arrangements. The arrangements are far from having commonalities and thus far from being apt so as to be conceptualized. Those terms themselves are not clear-cut enough, doubtful in their legal or political characteristic, as well. Rather, they are still at the level of theoretical debate over political theses.

Respectively, one arbitral tribunal award in the sense of legal ground does not suffice at all to identify or to formulate a rule by itself about the topic. In addition a single judgement or award cannot be taken a sole basis for the evaluation of a historical fact with countless ramifications, under a certain institution, whether continuity or succession, or else. Similarly, opinion of an organ mandated by a number of states in a limited area can not be generalised as a principle, or confirmation of a principle of international law, without the indication of the primary evidences of the purported principle to be already existing.

A concrete example to such likely generalisation is the citation to, and instant conclusion from, the Lighthouses Arbitration Case, which Turkey is not party, in the second report, paragraph 142 with respect to continuity and succession issue. It should be firmly emphasised that the given award is an individual and partial interpretation over the Lausanne Treaty and status of Turkey respectively. It is also one sided deduction therefrom. Consequently it should be neither reflected as a general principle, nor should it be used to formulate a principle as a ground as if corresponded to a general recognition.

## **Chapter XI**

### **Immunity of state officials from foreign criminal jurisdiction**

At the subject of immunity of state officials from foreign criminal jurisdiction, we would like to extend deep appreciation to Ms. Concepción Escobar Hernández for the sixth report which is elaborately prepared, as an indication of a productive outcome with the prospective fruitful and material draft

articles on the procedural aspect that is utmost significant level for the proper functioning of immunities.

At this point because of our implication from some comments of Special Rapporteur's and her inclination to trial process, we would like to call upon her not to overlook investigation fully. Some coercive measures as pointed out by the Special Rapporteur can be taken therein as well. A number of exceptional methods in the ordinary investigation procedures of states exclusive to foreign state officials can be offered. It may be a prior permission, or subsequent statutory approval mechanism or the other. That kind of cooperation methods can ensure the involvement of the court swiftly before the law enforcement or investigation officials take an action.

With respect to draft article 7 as the most controversial, we consider setting at present a fixed category of crimes exceptional to the *ratione materiae* to be not appropriate in time since the serious crimes of international concerns needed to be subject to exceptional treatment is an evolving topic in international jurisprudence and also pending in the Commission's agenda itself. It must be dealt in a holistic approach with other related areas. On its specific content, inclusion of some economic crimes might be too excessive and also prone to misemploy.

By reason of the foregoing it could be more practical to take a final decision on draft article 7 following to the completion of the parts on procedural aspects, since a set of possible robust and solid safeguards in procedural aspects which may mitigate the fears for its abusive use, can facilitate the adoption of draft article 7 as well.