



**Statement by the Republic of Turkey  
On Agenda Item 79  
(Report of the International Law Commission on the work of its 71st  
Session)  
at the Sixth Committee  
28 October – 6 November 2019**

**Cluster I**

**Cluster I  
Crimes Against Humanity**

Mr. Chair,

With regard to the topic: “crimes against humanity”, we would like to thank the Special Rapporteur Sean D. Murphy for his fourth and final report and congratulate the Commission for the completion of the draft articles.

Regarding the recommendation of the Commission on the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles, my delegation is of the view which is also expressed by some other delegations, that more time is needed to discuss about this issue before we decide on further procedure, since the draft articles and their commentaries have just been completed.

In this sense, for now we just have some remarks about the draft articles for possible future work.

Beginning with the first paragraph of draft article 3:

The Rome Statute stipulates that “persons” are responsible for the crime of genocide.

Similarly, in article 4 of the Convention on the Prevention and Punishment of the Crime of Genocide, it is mentioned explicitly that the persons committing genocide or any of the other acts enumerated in article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

On the other hand, according to the first paragraph of draft article 3, “States” have the obligation not to engage in acts that constitute crimes against humanity.

As States cannot be the perpetrators of the crime of genocide, they can’t be perpetrators of the crimes against humanity either.

With this understanding, we believe that commentaries to article 3 are not sufficient and convincing and Turkey is of the view that deleting the first paragraph of article 3 will be adequate.

On the other hand, we think an expression regarding the principle of non-retroactivity shall be included in the articles. This approach would also be compatible with the applicable rules of international law on treaties.

Mr. Chair,

In order to use the valuable time of the Commission and the delegations efficiently, the full versions of my delegation’s remarks will be uploaded to the Paper Smart portal for your consideration.

*In our statement, we would also like to draw attention to a reference to the case law of the European Court of Human Rights.*

*On the 7<sup>th</sup> paragraph of the commentary of draft article 8, it is written “regional human rights bodies have also interpreted their legal instruments as implicitly containing a duty to conduct an investigation”. And there are references to the case law of the European Court of Human Rights. Pursuant to the case law of the ECHR, the duty of effective investigation is accepted generally for the fundamental rights such as the right to life and prohibition of ill treatment.*

*Therefore, instead of the aforementioned sentence, we think it would have been better to state the following: “Regional human rights bodies have also interpreted their legal instruments as implicitly containing a duty to conduct an effective investigation into alleged violations of certain substantive rights”.*

*Furthermore, regarding the references, in the report in footnote 238, instead of *Kılıç v. Turkey* judgment, we think it would have been better to give reference to the *L.C.B. v. United Kingdom* judgment of 9 June 1998, Reports 1998-III, p.1403, § 36, which is referred in the *Kılıç v. Turkey* judgment.*

### **Cluster I**

#### **Peremptory Norms of General International Law (Jus Cogens)**

Mr. Chair,

With regard to the topic of peremptory norms of general international law (Jus cogens), we would like to thank Special Rapporteur Dire Tladi for his fourth and final report.

We also welcome the comment in the special rapporteur’s fourth report about our previous statement.

We appreciate the work of the Commission. However, similar to our thoughts expressed last year, Turkey is still hesitant about the need for progressive development of this concept.

We believe that there is not enough practice and current case law has been tentative and indirect in this regard.

Turkey is of the view that in the field of this topic, clear and specific rules in international law have not yet been formed.

Furthermore, like many other delegations, we also have concerns about the non-exhaustive list of Peremptory Norms of General International Law (Jus Cogens), added to the draft conclusions in the annex.

**Cluster I**  
**Other decisions**

**Provisional application of treaties**

Mr. Chair,

With regard to the provisional application of treaties, we would like to thank Special Rapporteur Mr. Juan Manuel Gomez Robledo for the draft model clauses.

As we mentioned last year, Turkey attaches importance to the consent of the States and international organizations regarding the provisional application.

With this understanding we just would like to reiterate that the rules should not create legally binding obligations.

Mr. Chair,

The Commission decided to include in its long-term programme of work two new topics:

**(1) Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law**

With regard to the first topic: “*Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law*”, we would like to express some concerns about the scope of the topic.

We think that it is difficult to clarify the serious violations of international humanitarian law as there is not enough practice and case law.

Furthermore, in the current multilateral environment, we evaluate that it is a very low possibility to reach a consensus especially in some political aspects.

The Commission should take a cautious and balanced attitude and we hope that the Commission will adopt appropriate approaches in this respect.

**(2) Prevention and repression of piracy and armed robbery at sea.**

With regard to the second topic: “prevention and repression of piracy and armed robbery at sea”, Turkey believes that the Commission’s future work might be very beneficial.

We are looking forward to following the work of the Commission on this topic.

Mr. Chair,

Before we conclude our remarks, we would like to convey our special thanks to Mr. Marcus Schmidt and Mr. Vittorio Mainetti for the organization of the 55<sup>th</sup> session of the International Law Seminar in Geneva.

As it is explained under the agenda item “Other Decisions and Conclusions of the Commission” of the ILC report, the Seminar enables young diplomats and academics to have a better understanding of the work of the International Law Commission and has a valuable impact on international law.

Thank you.