



**Statement by Ambassador Kaan ESENER,  
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Ministry of Foreign Affairs of the Republic of Türkiye**

**INTERNATIONAL LAW COMMISSION REPORT (CLUSTER I)**

Mr./Madam Chair,

I would like to start by expressing our deep appreciation of the work of the International Law Commission (ILC) and the Commission's contribution to the progressive development and eventual codification of international law.

This year marks the seventy-fifth anniversary of the ILC. Today, more than ever, we acknowledge the importance of preserving the international order through international law. In this vein, this delegation believes that uniform application of international law without resorting to double standards is a must if the international community aims to preserve international order and stability.

As stipulated in the Charter of the United Nations, the Member States are determined "*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*". As such, development of international law has been a key part of the work of the Organization. In this regard, my delegation reiterates its gratitude for the International Law Commission for its tireless efforts.

The commemorative event to be held within the margins of the International Law week would enable us to take stock of the work of the Commission in its entirety. I would like to use this opportunity to thank all the past and present members of the Commission for their remarkable achievements in the seventy-five-year long history of the ILC.

Over the past seventy-five years, the work of the Commission has served as the basis for many of the foundational treaties and other instruments of the international legal order. We are thankful for their dedication to the development of international law.

Before sharing our views on the report of the ILC, this delegation would like to express its appreciation to the ILC for holding a tribute meeting in honour of Mehmet Güney, a former member of the Commission, who sadly passed away earlier this year.

Mr. Güney was former Chief Legal Adviser of the Ministry of Foreign Affairs, represented Türkiye as Ambassador in Cuba, Indonesia and Singapore, served as a judge of the European Nuclear Energy Tribunal, International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

His outstanding achievements and legacy in diplomacy and various fields of international law will be remembered.

I would also like to seize this opportunity to congratulate Mr. Marcelo Vázquez-Bermúdez for his election to the Chair of the Commission. I would like to also congratulate Ms. Alina Orosan and Mr. Xinmin Ma for their election as Members.

Last but not least, this delegation also commends and extends its appreciation to the Codification Division of the Secretariat for their excellent work.

We believe that interaction between the Sixth Committee delegates and the members of the International Law Commission creates a mutually beneficial dialogue between Member States and the ILC on its work. In this regard, we take note that the Commission reiterated the recommendation to hold the first part of its seventy-seventh session in New York. Although the liquidity crises has been highlighted in various parts of the report, we remain hopeful that the ILC will be provided adequate budgetary resources commensurate with the important tasks attributed to it.

Mr./Madam Chair,

**(Other decisions and conclusions)**

Before moving on to the current topics, let me share our observations about the two new topics which were included into the Commission's long-term program, namely "**compensation for the damage caused by internationally wrongful acts**" and "**due diligence in international law**".

**As for the latter**, it was noted in the report that the objective of the topic would be to identify the legal character, scope and content of due diligence in international law. It was further noted that the topic would address due diligence, whether as an obligation, a duty or a principle. It is therefore prudent to keep the title of the topic as proposed, since its status and legal character under international law is yet to be explored and determined.

We commend Ms Penelope Ridings for having prepared the syllabus for the topic. We concur with the importance of the engagement by the ILC with contemporary needs of international community. As rightly stated in the syllabus, international law must keep pace with the changing reality and the increasing complexity of today's world.

That being said however, it is essential that the selection of the topics be guided by the needs and priorities of States and the topics should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification. Both topics selected to be included to the long-term working programme are, to a certain extent, related to the earlier work of the Commission to which significant divergence of views and approaches of Member States still remain.

We therefore encourage the Commission to take into consideration of the outcome of the previous works when adding a connected new topic into the working programme.

This observation is equally valid for the topic "**compensation for the damage caused by internationally wrongful acts**". We thank Mr. Martins Paporinskis for the detailed syllabus he prepared for the topic.

Here again, we would like to point out that the Articles on Responsibility of States for Internationally Wrongful Acts could be adopted in 2001 only after a long period of consideration by the Commission. Moreover, to date, states have still not been able to agree on a course action. This delegation has serious doubts on the possibility for states to reach a common understanding on the new issue while the divergence of views on the 2001 Articles remains and therefore is not convinced on the relevance for the Commission to take up this new topic.

Turning to the list of topics covered in Cluster I, I would first like to briefly address **“Immunity of State officials from foreign criminal jurisdiction”**.

I would first like to thank Mr. Claudio Grossmann Guiloff for his first report.

The topic was included in the work programme of the ILC in 2007 and the work conducted hitherto has proven that it is not one of the easiest topic dealt by the Commission.

The process of the second reading provides a useful opportunity to make necessary modifications on the draft Articles so that they can enjoy broad acceptance. In that regard, we encourage the Special Rapporteur and the Commission to take the time necessary to carefully consider the draft Articles as well as the views and suggestions of States and make best use of this process.

Türkiye attaches great importance to the endeavours to bring the perpetrators of crimes to justice and supports international efforts aimed at combating impunity. That being said, it is vital that the work on this important topic should take into account the importance of stability of international relations. It is equally crucial that the risk of political abuse of legal proceedings should be avoided. As highlighted in the report, the need for the Commission to appropriately balance respect for sovereign equality of States and ensuring accountability are also among the factors that should guide the work ahead of us. Finally, it should be born in mind that immunity is a procedural bar to exercise jurisdiction and does not efface accountability.

As for the second reading of the draft Articles, this delegation welcomes the Special Rapporteur’s emphasis on the equal treatment of the comments of States and their careful consideration. Nevertheless, we are concerned by the fact that the comments made prior to the

Commission's completion of the first reading in 2022 and at earlier meetings of the Sixth Committee are not addressed as such in the Special Rapporteur's first report. We are doubtful whether this is the established practice of the Commission for the second reading process. Even if it be the case, we are of the view that excluding the earlier comments from consideration would not best serve the aim of the second reading, given the limited number of written comments and observations were sent by the deadline for the present topic.

Hence, we wish to emphasise that the comments made by Türkiye on the previous sessions remain valid, in particular the comments concerning the draft Articles 7 and 12. On the other hand, as the first report only deals with Article 1 to 6, it would suffice, at this stage, to merely make a reference to our observations from earlier Sixth Committee meetings.

With regard to the draft Article 1, we are of the view that ambiguity caused by the word "connected" should be addressed. The phrase "persons *connected* with diplomatic missions, consular posts, special missions, international organizations and military forces of a State" requires further clarification as to the scope of that provision. This could be made, either by rephrasing the sentence or by providing additional interpretation in the commentary.

On the topic "**Sea level rise in relation to international law**", I would like to start by emphasising the importance of the topic and its immediate relevance to Member States around the world.

The urgency of the climate crisis is undeniable. The IPCC Report on Climate Change<sup>1</sup> states that "Already, with 1.1 degrees Celsius of global temperature rise, changes to the climate system that are unparalleled over centuries to millennia are now occurring in every region of the world, from rising sea levels to more extreme weather events to rapidly disappearing sea ice."

The IPCC finds that there is more than 50 percent chance that the rise in the global temperature will reach or surpass 1.5 degrees Celsius between 2021 and 2040.

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<sup>1</sup> [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf)

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There is no doubt that climate change is an existential threat, especially for the most vulnerable, the Least Developed Countries and the Small Island Developing Countries. They are severely impacted by the effects of climate change despite contributing very little to this challenge.

Therefore, most vulnerable countries should be prioritized in combatting climate change. They need to adapt faster and build resilience. In this regard, Türkiye always underlines the importance of increasing the adaptation capacity and resilience of developing countries in the face of climate change by means of providing financial support and sharing technology, best practices and know-how.

We believe that all developing countries must have access to the climate related finance, programmes and technology transfer without any obstacles.

With regard to the fight against climate change, we strongly support the dictum that no one should be left behind.

As regards the report of the ILC on the topic of sea level rise in relation to international law we wish to briefly state the following.

As highlighted on several occasions by this delegation<sup>2</sup>, Türkiye is of the view that the UN Convention of the Law of Sea, which is referred to in the report, is not the only legal framework that regulates all activities in the oceans and seas. As a matter of fact, those concerns and objections have also been raised by a number of other States over the years. We do also not agree with the view that the Convention has a universal and unified character. I wish to refer to our well-known position on this subject and state that the references cannot be construed as change in our position. In this vein, it is suggested that this approach towards the UNCLOS should be taken into consideration in the future work on the topic.

Thank you.

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<sup>2</sup> See, *inter alia*, A/68/PV.63, A/70/PV.82, A/71/PV.68, A/72/PV.64, A/73/PV.50, A/74/PV.43, A/76/PV.48, A/77/PV.56 (Resumption I), A/78/PV.44.