



**Statement by the Republic of Turkey
at the Sixth Committee
on the Report of the International Law Commission
25 October - 3 November 2021**

Cluster III

Succession of States in respect of State responsibility

Madam Chair,

With regard to the topic: “Succession of States in respect of State responsibility”, we would like to thank Special Rapporteur Pavel Sturma for his fourth report.

It is well researched, well written and has a significant value.

Today, we would like to share some of our views about the draft articles.

First, regarding draft Article 7 bis, we believe that the difference between composite acts and continuous violations is not sufficiently clear.

In addition, we see that the report aims to maintain consistency with the Articles on Responsibility of States for Internationally Wrongful Acts. However, we should also bear in mind that those articles might still be considered as open to discussion, specifically as regards whether and to what extent they reflect customary international law.

Therefore, we believe it would be better if the Commission discussed draft Article 7 bis in more detail in its future work.

With respect to paragraph 2 of draft article 16, we would like to indicate that Turkey supports the view that the successor State does not have an obligation to make restitution in lieu of the predecessor State.

Furthermore, regarding paragraph 2 of draft article 17, as mentioned in the Commission's report, we consider that the causality between the successor state and the predecessor State is not clear. Therefore, it would be appropriate to work cautiously on this draft article.

In paragraph 143 of the ILC report, it is indicated that some members were of the view that recourse to lump-sum agreements should not undermine the rule of full reparation as a fundamental principle of the law of State responsibility and it was observed that lump-sum agreements might not be appropriate to settle disputes involving erga omnes obligations.

At this point, as the Special Rapporteur reiterated in his introduction, in Part One of his fourth report, we would like to highlight the importance of the general consideration of the subsidiary nature of the draft articles, and the priority of agreements entered into between States concerned.

Therefore, we believe that lump sum agreements are part of the State practice, and the opinions which undermine the effect of those agreements should be considered as contrary to the aforementioned general consideration.

Madam Chair,

Before we conclude our remarks on this subject, we would also like to briefly provide further clarification regarding our views on the continuity theory.

Paragraph 142 of the second report of the Special Rapporteur contains a phrase "Turkey (the continuing State of the Ottoman Empire)" while referring to the Lighthouse Arbitration case. There is also a reference to the same case in the present ILC report.

We had conveyed our views on this issue in our statement concerning the report of the Commission on the work of its 70th session. Therefore, we will not go into the details of that matter today. However, we would like to emphasize that Turkey was not a party to that case. In

addition, we consider that the continuity theory is still controversial, and there are varying views in doctrine. We see that, in line with this understanding, the Special Rapporteur indeed reflected the array of views with regard to certain other instances of secession and succession in his second report. In the same vein, we would like to highlight that there are also different opinions with regard to the case of the Ottoman Empire.

We would appreciate if the Special Rapporteur would bear in mind our comments for future work on the topic.

General principles of law

Madam Chair,

As for the topic: “General principles of law”, we would like to express our appreciation to Special Rapporteur Mr. Marcelo Vázquez Bermúdez for his second report, and to the Secretariat for the memorandum surveying the case law.

The second report and the memorandum have provided an excellent overview of state practice and relevant international cases as well as treaties.

Turkey agrees with the Special Rapporteur’s general approach that the criteria for identifying general principles of law must be sufficiently strict to prevent them from being used as a shortcut to identify norms of international law, and at the same time sufficiently flexible so that identification would not amount to an impossible task.

Turkey supports the approach of abandoning the term “civilized nations” contained in Article 38, paragraph 1 (c), of the Statute of the International Court of Justice.

In addition, regarding draft conclusion 4, we welcome the decision of the Commission to use the phrase “various legal systems” instead of “principal legal systems”.

Finally, as indicated in the second report of the Special Rapporteur, practice and jurisprudence regarding the role of international organizations on this matter appear to be scant.

Although there might be exceptions, the relevant practice has always favoured the analysis of the legal systems of States to identify a general principle of law.

Therefore, we support the cautious approach regarding the inclusion of international organizations.

Furthermore, as also indicated in the ILC report, we believe that such inclusion would require justification, as Article 38, paragraph 1 (c) of the Statute of the International Court of Justice does not refer to international organizations.

Madam Chair, this concludes our remarks for Cluster III.

Thank you.