



New York, 23 October 2023

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**Statement by Ambassador Kaan ESENER,
Director General for International Law,
Ministry of Foreign Affairs of the Republic of Türkiye**

INTERNATIONAL LAW COMMISSION REPORT (CLUSTER I)

Mr./Madam Chair,

It is a great pleasure and honour to be here amongst distinguished experts of international law to deliver a statement regarding this year's report of the International Law Commission.

We welcome the important contributions that the Commission makes toward the progressive development of international law and its codification.

Next year will mark the seventy-fifth anniversary of the ILC. The commemorative events would surely enable us to discuss in-depth of the achievements of the Commission. Let me nevertheless seize this opportunity to thank the esteemed members of the ILC for their hard work towards helping achieve international legal order.

Mr./Madam Chair,

Turning to the list of topics covered in Cluster I, I would first like to briefly address "**General Principles of Law**"

At the outset I thank Special Rapporteur Mr. Marcelo Vázquez-Bermúdez for his work which has now culminated to the draft conclusions that was adopted by the Commission together with the commentaries.

During the previous sessions of the Sixth Committee, my delegation voiced its doubts concerning the implicit recognition of the transposition of a general principle of law from domestic legal systems and highlighted the need for clarification for the proposition that recognition of transposition would be implicit and did not require an express or formal act.



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The commentary for draft conclusion 6 refers to the “*compatibility test*” as the threshold for such transition. Hence, the recognition is implicit when the compatibility test is fulfilled.

The commentary provides just an example in paragraph 5 and presents the rationale behind this “*compatibility test*” as “*the distinct structures and characteristics between two law systems that cannot be overlooked*”. This does not, in our view, commensurate with required clarification of the “compatibility test” for its application. Thus, Türkiye’s previously expressed doubts and concerns remain relevant today.

On the other hand, the draft conclusion 4 as well as the commentary for draft conclusion 7 address the issue of “partial transposition”. Here again, we would like to suggest further clarification regarding the criteria to be applied to identify which part and what extent it can be transposed.

This delegation notes the divergence of views among the members of the Commission as to the “*second category of general principles of international law*”, as well as the lack of common approach in the doctrine on this issue. These divergences of views need to be carefully reflected when the draft conclusions are transmitted to Governments for comments and observations. Without prejudice to our comments and observations to be provided during that process, we wish to express support to the call for caution expressed in the commentary regarding the separate and dissenting opinions which are examined under the heading “*decisions of courts and tribunals*”. As stated in the commentary, some caution is also needed for the decisions of national courts, as a subsidiary means for the determination of general principles of law.

I would also like to address the topic of “**Sea-level rise in relation to international law**”

Mr./Madam Chair,

With regard to “*Sea-level rise in relation to international law*”, we would like to thank for the “Additional Paper” and its “Addendum” prepared by the two Co-Chairs, Mr. Bogdan Aurescu and Ms. Nilüfer Oral on issues related to the law of the sea.



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Sea-level rise is already impacting the lives and livelihoods of millions around the world, with a direct and overwhelming impact on the least developed and small island nations.

Low-lying coastal areas are home to hundreds of millions of people, and more than 65 million people live in Small Island Developing States (SIDST), which are the most vulnerable to sea level rise. Türkiye supports the work of SIDS which draw attention to the adverse impacts of climate change on the ocean.

No country is immune from the negative effects of the climate change. Apart from imminent effects on the small island states, all coastal states will be impacted by the sea-level rise.

Sea-level rise, in addition to many social and humanitarian consequences, has the potential to create many legal issues on different levels.

UN Convention on the Law of the Sea was negotiated when sea-level rise was not an issue. The current challenges are not covered in the law of the sea.

Coastal conditions may change however, balance of coastal State and third State rights need to be observed.

International community should find solutions with regard to the negative impacts of the sea-level rise. Türkiye has always expressed support for the ILC to study this subject, and will continue to do so.

Türkiye, as a coastal state surrounded by the Black Sea, the Aegean Sea and the Mediterranean Sea, will continue to work with all concerned states, especially with those prone to the negative effects of the rise in sea level and urges the international community to cooperate in order to minimize its consequences.

We are ready to contribute to the efforts under the UN in order to maintain the legal certainty, security, predictability and stability in terms of maritime zones, and also support the SIDS.

Türkiye believes that the Study Group should continue to work on the issue and analyse inputs from various countries that are most affected by sea-level rise.

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Before concluding, I would like to make few remarks on the “**Other decisions and conclusions**”.

We note that the Commission decided this year to include the topic “Non-legally binding international agreements” in its programme of work and appointed Mr. Mathias Forteau as the Special Rapporteur.

I congratulate Mr. Forteau for his appointment and wish him success.

We recall that the topic was included in the long-term programme in 2022 and rather after a short term of period, it already figures in the work programme of the Commission. We understand that there are no rules governing the transfer of a topic from the long-term work programme to the current programme of work, hence this fast advance of the topic might be in accordance with the practice of the ILC. We however believe this subject does not require to act hastily.

Firstly, it is a fact that, as noted in Annex I of the last year’s report of the ILC, the practice of non-legally binding international agreements has considerably grown. However, it is doubtful whether the topic fully correspond to the criteria for the selection of new topics, namely “*pressing concerns of the international community as a whole*”. It is understood from the said Annex that only one delegation raised in 2021 that it wished that the Commission focus on topics that are “*more pertinent for international practice, such as the use of non-binding instruments in the identification and application of international law*”.

Secondly, the topic is currently being discussed at other international expert bodies, such as the Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI). It might therefore be prudent to observe and follow the developments in these fora before embarking upon work on this subject.

This will conclude our remarks for Cluster I.

Thank you.