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STATEMENT
by
TURKEY

On agenda item 83
"Report of
the International Law Commission"

Chapter VI: "Identification of Customary International Law" Chapter VII: ''Crimes Against Humanity"

atthe
Sixth Committee

6 November 2015, New York

Mr. Chairman,

Today my delegation wishes to address the following topics: "Identification of Customary International Law" and "Crimes Against Humanity".

We welcome the progress made on the topic "Identification of Customary International Law". Indeed, customary international law is one of the main sources of international law and we would like to thank the Special Rapporteur, Sir Michael Wood for the valuable work undertaken in the third report. We support the two-element approach.

With regard to draft conclusion 4 (5), since States remain the primary subjects of international law, we agree that conduct by other non-state actors is not practice for formation or identification of international law.

With regard to draft conclusion 11, concerning inaction, we believe that elements ascertaining the formation of a rule of international customary international law need to be carefully evaluated. Evidence not substantiated through concrete elements, or based on assumptions, should not be taken into account for the formation or identification of customary international law. Therefore, we concur with the view according to which the circumstances under which inaction would be seen as relevant should be further examined.

Regarding draft conclusion 12, on the role of treaties, we would like to express that we cannot agree with the view that the geographical distribution of the parties to a treaty could serve as evidence of the general character of practice. We believe that this would reflect a limiting approach, and restricting the question to a sole criteria would not be desirable.

Regarding draft conclusion 13, we believe a high threshold should be set on the be

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conferences with regard to formation and identification of customary international law. The adoption of a resolution should not be equated with the acceptance of its content as customary international law. We agree with members of the Commission which expressed that "the evidentiary value of these resolutions were in any case to be assessed with great caution".

Regarding draft conclusion 14, my delegation considers that judicial decisions could serve as secondary or subsidiary evidence for identification of rules of customary international law.

As to draft conclusion 16, on the persistent objector, which is a well-established concept in international law, we welcome that it has received widespread support and thank the Special Rapporteur for the many references to practical examples in the commentary. Moreover we agree with the approach of the Special Rapporteur on the way forward regarding this issue.

Concerning the first report of the Special Rapporteur, Mr. Sean D. Murphy on "Crimes Against Humanity", we take note of his very detailed treatment of this subject. We have examined the report carefully and have questions on parts of the report, for example concerning footnote 44, which we believe does not accurately reflect the content of the document it is referring to. We will seek clarification on this issue and thus reserve our position to make further comments on it.

With regard to the 4 draft articles adopted together with commentaries, we note that the definition of crimes against humanity contained in draft article 3, differs from the definition set forth in the Rome Statute on two points on which our delegation would welcome further clarification.

First, paragraph 4 of draft Article 3 provides that "this draft article is without prejudice to any broader definition provided for in any international instrument or national law". We note that the Convention Against Torture includes a similar provision. However, given the purpose

of the present exercise on