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Session on

**Alleged violations of international law and international humanitarian law by the
Turkish Republic and its officials in their relations with the Kurdish people and
their organisations**

(Paris, 15-16 March 2018)

JUDGMENT

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I. INTRODUCTION

The request to consider the evidence related to the conflict between the Turkish State and the Kurdish people was first submitted to the PPT in July 2017.

The terms of reference:

a) a specific focus on the most recent period and events, with consideration of the historical and broader geopolitical background;

b) to consider the severity of the conflict and the respective responsibilities for systematic violations of fundamental individual and peoples' rights of the Kurdish population, as well as denial of their right to self-determination;

c) an assessment of the responsibilities of the main actors in the conflict according to the principles and binding provisions and instruments of international law.

In compliance with the terms of reference of its statute, the Secretariat of the PPT activated the procedures of verification of the contents of the request, as well as of the qualification of the proponents, to assess specifically whether the request could be considered within the competences of the PPT, and whether it corresponded to the broader doctrinal perspective of the Charter of the same PPT, the Universal Declaration of Peoples Rights (Algiers, 1976), and of its successive interpretations across the more than 40 previously assessed cases.

Following the declaration of the acceptability of the request by the Presidency of the PPT, the Secretariat activated the instruction phase to assure the most complete and coherent documentation and coordination for the public hearings, to support a formal act of accusation¹ to be submitted in due time to allow its notification to the concerned parties.

According to the PPT's statute, both the opening of the procedure, as well as the final act of accusation have been notified through certified mail to the accused party's Embassy in Paris, with the request to exercise, in their preferred form, the right of defense (Annexe 1).

The public hearing of the reports, witnesses, experts included in the agenda of the PPT Session (see Annex 2 for the program) was held over two full days at the Bourse du Travail, March 15-16, 2018.

¹ <http://tribunal-turkey-kurds.org/index.php/in/>

The panel of the 7 international Judges included, in alphabetical order:

Teresa Almeida CRAVO

Assistant Professor in International Relations at the Faculty of Economics of the University of Coimbra and a Researcher at the Centre for Social Studies. She is currently co-coordinator of the PhD Programme Democracy in the XXIst Century and coordinator of the Master's degree in International Relations – Peace, Security and Development Studies, both at the University of Coimbra. She holds a PhD from the Department of Politics and International Studies of the University of Cambridge. In the last years, Teresa has been a Visiting Fellow at the University of Westminster, in the UK, at the University of Monash, in Australia, and a Predoctoral Fellow and later an Associate at the Belfer Center for Science and International Affairs, at the John F. Kennedy School of Government at Harvard University. Her research interests include peace and conflict, security and development, interventionism, and foreign policy, particularly within the Lusophone context.

Madjid BENCHIKH

Professor Emeritus of the University of Cergy-Pontoise (Paris-Val d'Oise) where he also directed the Doctoral School of Law and Humanities.

He was Dean and President of the Scientific Council of the Faculty of Law of Algiers. He coordinated the creation of the Amnesty International section in Algeria of which he was the first president. He was a founding member of the Permanent Peoples' Tribunal. He has taught in several universities in Algeria and in Europe and published several books including "International Public Law" (Casbah Editions 2016, Algiers). He has organized various struggles to denounce violations of democratic freedoms and human rights in Algeria or in other countries.

Luciana CASTELLINA

Journalist and writer, she has been an exponent of the Italian Communist Party and the Unity Party for the communism, for various legislatures deputy of the Italian Parliament and several times member of the European Parliament. Former Vice-president of the EU Commission on Latin and Central America, she is honorary President of the Arci association and member of the Permanent Peoples' Tribunal.

Domenico GALLO

Magistrate, he has been serving in the Court of Cassation since 2007, recently taking on the role of President of the Chamber. He was elected Senator in 1994. He has actively participated in the association life and civil society movements active on the theme of peace and the defense of human rights. He has edited numerous publications on issues related to institutional and human rights issues. In 2013 he published "Da sudditi a cittadini il percorso della democrazia" (Ega). He collaborates with the newspapers Il Manifesto and Il fatto quotidiano.

Denis HALLIDAY

He was the United Nations Humanitarian Coordinator in Iraq from 1 September 1997 until 1998. He was previously Deputy Resident Representative to Singapore of the United Nations Development Programme. He holds an M.A. in Economics, Geography and Public Administration from Trinity College, Dublin. After a 34-year career at the United Nations, where he had reached Assistant Secretary General level, Halliday resigned in 1998 over UN sanctions that cut off food supplies to Iraq, characterizing them as "genocidal." Laureate of the Gandhi International Peace Award, he is member of the Permanent Peoples' Tribunal.

Norman PAECH

Born in Bremerhaven, Germany, he is a lawyer and professor emeritus of political science and public law at the University of Hamburg.

Philippe TEXIER

President of the Permanent Peoples' Tribunal. He is an honorary judge at the Cassation Court of France. He was a member of the Committee on Economic, Social and Cultural Rights of the United Nations High Commission for Human Rights from 1987 to 2008 and its Chairperson from 2008 to 2009. He was director of the Human Rights Division of ONUSAL (UN Mission in El Salvador) from 1991 to 1992, and an independent expert of the Human Rights Commission in Haiti from 1988 to 1990.

The General Secretariat is composed of Gianni TOGNONI and Simona Fraudatario.

II. A BRIEF HISTORICAL AND GEOPOLITICAL NOTE

In accordance with its terms of reference, this Session of the PPT focused solely on the most recent period of the conflict of the Kurdish people with Turkey, and on the analysis and assessment of the violations of the rights formally recognized by the international Conventions of the post Second World War period.

Two obvious but fundamental remarks are, however necessary, to better interpret and qualify the overall meaning of the facts which have been submitted to the PPT.

Firstly, the well known – though often either forgotten or taken as irreversible – roots of the present situation of fragmentation of the Kurdish people and of the violation of their right to self-determination go back to the decisions taken by the then winning powers of the post First World War period. The state borders of the dismantled Ottoman Empire were traced in the complete absence of any possibility for the Kurdish people to express, in institutional and political form, the great complexity of their ethnic, religious, historical, and cultural identities.

The resulting political framework and its concrete manifestation on the ground have contributed to the whole area's instability and have had particularly heavy consequences for the Kurdish people, who have been divided, dispersed and fragmented as minorities in various and very different states, and often denied any form of autonomy.

This arbitrary decision, dictated at the time by the interests of the political and economic actors involved in the exploitation of the enormous oil resources of the area, led to the concession of sovereignty to scarcely inhabited areas, and to the denial of any form of autonomy to those more intensely populated and with an ancient identity such as the Kurdistan. The dramatic consequences of that original violation are all too well known.

Secondly, though it is clearly not the task nor the competence of this PPT to enter the debate of whether or how to meaningfully address the impact of this historical decision – it is, indeed, up to the peoples and subjects of rights to find their protagonist role – it is equally clear that a full understanding of the internal conflict examined in this Session between the Kurdish people and the present state of Turkey would not be possible without a living memory of the past recalled above.

It is therefore with this historical and geopolitical past in mind, and the acknowledgement of its present consequences, that have become even more explicit and tragic with Turkey's wider strategy in the region (and with such direct implications for the Kurdish population of Syria), that this PPT judges the evidence presented, and also gives recommendations for a more peaceful and just future.

III. THE FACTS

The relationship between the Turkish Republic and its Military Forces and the Kurds has a protracted and fraught history. Although the potential number of violations perpetrated during such a long-time frame of several decades is vast, the Prosecutors who brought the charges before the Permanent Peoples' Tribunal (PPT), Jan Fermon and Sara Montinaro, requested it to focus solely on:

- (1) War crimes committed in the period between 1 June 2015 and 31 December 2017, in several cities of South East Anatolia, where the majority of inhabitants were Kurdish;
- (2) State crimes, such as bombings, assassinations or kidnappings, committed since 2003, in Turkey and abroad, against representatives of the Kurdish movement, their press organs and institutions.

The Prosecution requested the PPT to find the Turkish Republic, as a subject of public international law, primarily responsible for such crimes. The justification lies in the allegation that various Turkish State organisations have engaged in a concerted way, over long periods of time, in the commission of crimes against the Kurds with a common criminal aim. Thus, today's alleged perpetrators are merely perpetuating a long-standing and continuous practice of the State organs they embody, which extends to many administrations with different political or religious orientations. Imputing said crimes to only particular individuals would be a denial of the continuity of these practices across time and space, and, therefore, inadequate.

In addition, the refusal on the part of the Turkish State to allow for independent investigations of these allegations and to collaborate in the identification of direct perpetrators prevents the establishment of individual criminal responsibility beyond the two individuals accused by the Prosecution of being liable for said crimes: President Recep Tayyip Erdogan and General Adem Huduti.

President Erdogan stands accused of seeking a confrontation with the Kurds, whilst stirring up nationalistic and chauvinistic tendencies in Turkish society and branding the Kurds indiscriminately as "terrorists", thus setting up the State's security apparatus to use extreme force and disproportionate violence in their operations, and further reinforcing and legitimising their actions.

General Huduti stands accused, as the head of Turkey's second army and the main architect behind military operations in its borders with Syria and Iraq, of leading the military operations against the Kurds in South East Anatolian cities, between 1 January 2015 and 15 July 2016, which resulted in widespread civilian casualties and massive destruction of civilian infrastructure, including the devastation of entire neighbourhoods and centuries-old historic and cultural monuments.

The Prosecution has stated that all the events and facts presented originate in the denial by the Turkish Republic of the right to self-determination of the Kurdish people within the State. It notes that the Kurds have been systematically excluded from the economic and political decision-making process, their culture and language banned from public usage, and their political parties, media, journalists, and activists targeted. It has argued that this systematic denial of the Kurdish presence has led to armed conflict between the State and the Kurdish Workers Party (PPK) and is a direct cause of the violent confrontation in the Kurdish cities of South East Anatolia and the crimes committed against Kurds both inside and outside Turkey. The Prosecution has, therefore, requested that the PPT establishes that the root cause of the War and State crimes alleged was the denial of the right to self-determination of the Kurdish people.

The PPT was chosen to consider the charges presented by the Prosecution in the absence of other effective remedies. Many cases have been taken to the European Court of Human Rights without Turkey responding in any meaningful way; others have been trapped in the need to exhaust domestic judicial remedies demanded by the European Court and the lack of Turkish authorities' cooperation; Turkey did not sign the Treaty of Rome and there is no realistic expectation that the UN Security Council would refer the situation to the International Criminal Court. Furthermore, by branding the Kurdish armed struggle as "terrorism", Turkey has thus far placed itself outside the scope of international humanitarian law and outside the definition of war crimes punishable under Turkish national law.

Extrajudicial assassinations and disappearances could be pursued under international law, but only in terms of individual responsibility, whereas the Prosecution makes the case for the need to charge the Turkish State itself, as, State structures have played an indispensable role in the commission of such acts.

In the absence of an international or domestic judicial body that can exercise jurisdiction over these crimes, the PPT has been called upon to consider the evidence presented, produce a judgment, and to make recommendations, on:

- (1) The acknowledgment of the denial and violation by the Turkish State of the right to self-determination of the Kurdish people as a root cause of these crimes (see Section IV);
- (2) The existence of an internal armed conflict between the Turkish State and the PKK (see Section V);
- (3) The commission of war crimes against Kurds in South East Anatolia between 1 June 2015 and 31 December 2017;
- (4) The liability of the Turkish State, as well as of President Erdogan for war crimes committed during that period, and the liability of General Huduti for the period between 1 January 2015 and 15 July 2016;
- (5) The commission of state crimes against Kurds, in Turkey and abroad, since 2003;
- (6) The liability of the Turkish State and of President Erdogan for these state crimes;

Kurdish People's Right to Self-Determination

The six first witnesses before the PPT – Bill Bowring, Hamid Bozarslan, Ahmed Yildirim, Ahmed Pelda, Rojan Hazim and Nazan Ustundag – confirmed in their analysis how Turkey's centralism has been built on the "imposition of Turkishness" and consequent exclusion of Kurdish identity and presence in the country's political, economic and cultural life. Most manifestations of the Kurdish people's right to self-determination have been understood as a threat and met with State repression.

A recurrent understanding voiced by the witnesses was that the Peace Process between the Turkish State and the PKK, which lasted from 2012 (with Abdullah Öcalan calling for a cease-fire in March 2013) until April 2015 (when the government ceased to attend peace talks), was not entered in good faith by President Erdogan, who had initiated a series of distraction tactics early on, in order not to follow the reconciliation plan. Early government talk regarding self-determination proved to be empty. The war in neighbouring Syria further destabilised the possibility for peace. The State did not want the Kurds to play a part in this conflict. The fighting in and around Kobane, when Turkey stopped supplies reaching the Kurdish forces combating ISIS, effectively terminated attempts at Peace and led to the State "Collapse Plan", which was proposed at a National Security Council meeting on October 30, 2014.

War crimes

The evidence on the events in the Kurdish Cities of South-east Anatolia refers specifically to : Cizre, Sirnak, Nusaybin and Sur (Diyarbakir). These cities were exposed during 2015-2016 to a destructive process prior to physical obliteration and killing, evacuation and permanent removal of the Kurdish population.

This “Collapse Plan” called for Kurdish settlements to be destroyed, repopulation suppressed and pacification to be obtained by mass destruction, arrests and evacuations. During this Plan of suppression, many thousands of Kurds were killed, wounded and arrested with some 150-300,000 survivors removed prior to bombing. This plan employed in the four cities mentioned above was intended to paralyse and neutralise the PKK Kurdish response during 2015-2016.

State provocations began with unsupported Turkish troops being exposed and defeated. An HDP rally was bombed. Meantime, the AKP lost electoral support and State aggression towards the Kurds increased. Provocations continued, such as a mid 2015 attack on a group of young people gathered to rebuild a school in Kobane with fatalities and many wounded. The State was deemed responsible. State assassinations grew in number and frequency. State jets were used against both ISIS and PKK fighters. Tanks were employed and more airstrikes completed the termination of any hope of peace between the Kurds and the State.

Police actions were employed including in Sirnak and neighbouring districts. Curfews were declared in 9 provinces and 35 districts. In Sur and Nusaybin, hundreds died and basic human rights for 1.6 million were affected.

This destruction and the repression of local community leaders led to significant AKP gains in the November 2015 general election. By the end of the year, Turkish forces targeted urban areas with 24-hour curfews, military rule and artillery fire. (A chronology of these and related events is attached as Annex.)

An account of the events that took place in Cizre, the Sur district of Diyarbakir as provided by the Prosecutor are attached as Annex. This Annex describes and illustrates the military and police aggression committed by the Turkish State and underlines the question before the Tribunal whether the conflict between the State and the Kurds in particular the PPK constitutes armed conflict in the context of International Law.

These tactics on the part of the Turkish government were confirmed by the various eye witnesses before the PPT: Faysal Sariyildiz, Leyla Imret, Fatma Demir, Erhan Dinc, Sabiha Gunduz, Serkan Tutak, Fatma Sik Barut, Ercan Ayboga, Hamit Otun, Emine Otun, Ayse Ciftci and Faruk Encu. Their testimony recounted random bombings of civilian infrastructure during curfews, intentional shooting of civilians – including those bearing a white flag, setting buildings with civilians in them on fire, deliberately withholding ambulance assistance, purposefully preventing humanitarian aid from reaching civilians trapped, cutting electricity and targeting water tanks to force displacement, complete destruction of their homes and neighbourhoods, and bombing of important Kurdish cultural and historical sites.

These accounts were corroborated by international witnesses Ezio Menzione – who referred to the prolonged curfews as “sieges” under continuous bombings – and Fr derike Geerdink – who gave testimony of her investigation of the Turkish State bombing of a commercial convoy in Roboski.

These testimonies were accompanied by photographs and videos of the cities identified here. It is clear, by the level of destruction narrated and also by the evidence provided, that the Turkish authorities engaged in

heavy militarised operations, far beyond what a police action would look like (as claimed), causing massive and intentional suffering, devastation and displacement amongst the Kurdish people.

State crimes

The crimes reported in this part involve targeted killings, extrajudicial executions and forced disappearances perpetrated by the various branches of security and intelligence services of Turkey.

Reports and accounts from the witnesses present at the court – Ahmet Nesin, Kendal Nezan, Hatip Dicle, Ferda Cetin, Zubeyir Aydar, Cuneyt Canis, Sanar Yurdatapan, Nursel Kilic, Murat Polat, Yuksel Koc, Mahmut Sakar – confirm the proposition that the behaviour of the Turkish State is politically motivated and designed to spread fear amongst the most active defenders of the Kurdish right to self-determination and to participation in Turkish public life.

The persistent lack of criminal responsibility for such crimes makes evident not only a clear absence of willingness to investigate them seriously, and to prosecute the responsible parties, but also confirms the accusation of organised impunity, sanctioned by the State.

International witnesses Nils Anderson, Antoine Comte and David Philips, as well as reports from international agencies, corroborated these accounts.

IV. THE RIGHT OF SELF-DETERMINATION

The very core of the conflict between the Kurdish people and the Turkish Republic and the root cause of the many violations of international law by the Turkish military forces is the constant and systematic denial of the right to self-determination of the Kurdish people. The principle of self-determination has been expressed in various international documents since the second world war and has reached the status of mandatory international law in the meantime. Its incorporation in common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC) of 1966, in force since 1976, demonstrates the central importance of the right of self-determination for peaceful relationships between peoples and states.

The Kurdish People is the subject and bearer of the right of self-determination, both as a people which is ethnically homogenous and based in a defined settlement area and as a minority in the states between which its settlement area has been divided. The fact that the Kurdish People only settles in the individual states as an ethnic minority does not reduce its right of self-determination to mere individual protection of individual members. The Kurdish People in all states is entitled to it as a collective right.

The content of the right of self-determination aims to preserve the identity of the Kurdish people and to protect its existence in the future. It can, in some cases, come into conflict with the right of the states to territorial integrity. The two rights can be reconciled if the claim to self-determination is restricted to the so-called internal right of self-determination, which is granted and practised within the pre-defined state borders. This right of self-determination within the borders of the states concerned encompasses firstly all previously denied rights of the Kurdish people to its own language, education, training, press, radio, television and literature, whether under its own supervision or as a recognised part of the state sector. The institutional safeguarding of these rights also requires state funding to be made available. State funding must also be provided for the reconstruction of homes, villages, infrastructure and agricultural, industrial and business establishments, which have been destroyed, in order to facilitate the return of the more than 4 million refugees.

The political framework of the right of self-determination includes not only the freedom to establish political organisations, parties and foundations and to be able to make use of the right of assembly and right to demonstrate without discrimination but also the creation of a system of self-administration. This may include, for example, its own parliament with legislative power, its own jurisdiction, its own security forces (police) and other local authorities. The scope of the transfer of state functions to the self-administration of the Kurdish people is not prescribed by law but depends on political negotiations. The greater the proportion of functions transferred, the more necessary it becomes to grant financial and fiscal autonomy.

It is important to establish a state organisation for equal participation in the social and political processes of the state as a whole, which at present is completely absent. It must be ensured both that the central state has an influence on policy and self-administration of the Kurdish people and vice versa. Whether, in this context, the concept of autonomy or federalism is chosen is once again a political question rather than a legal one and has not been a topic in the deliberations of the jury.

In the event that the government cannot decide on any of the possible solutions but continues a policy of repression, military oppression and breach of human rights, the 'internal' right to self-determination will extend once again to 'external' right to self-determination with the consequence of secession to sovereignty. Until the early nineties of the last century this has been the task of the Kurdish movement. Currently, however, this option has been abandoned and is only a legal possibility if war and systematic denial of human rights continues.

V. THE QUESTION OF THE LEGAL NATURE OF THE CONFLICT BETWEEN THE KURDISTAN WORKERS' PARTY (PKK) AND THE TURKISH STATE

For many years, the Turkish Government has considered the Kurdish fighters and the Kurdistan Workers' Party (PKK) as terrorists and designated the hostilities directed by this organization as "terrorist activities". The result is that, according to Turkish institutions, especially security and judicial bodies, activists and activities of such organization are subject to anti-terrorism laws. The Turkish Government even calls, mostly without result, on other States to include the PKK in the list of terrorist organizations and to apply, accordingly to their activities, national laws, and international conventions on counter-terrorism. According to the PKK leaders, the hostilities carried out by this organization result from the denial by the Turkish State of the right to self-determination of the Kurdish people. The repressive policies of Turkish authorities against the Kurdish populations left no other choice to the Kurdish people but to organize under the direction of the PKK an armed struggle, which should be interpreted as a non-international armed conflict. The armed actions carried out by the PKK must, according to the organization's leaders, be subject to international law relating to non-international armed conflict.

It is therefore of critical importance to assess the juridical qualification which is to be given to the armed conflict between Turkey and the PKK, since the law applicable to the military activities of this organization will be a direct consequence of such characterization.

Armed conflicts in the territory of a State which oppose its security forces to one or more groups formed and organized within the populations of this country can come under either national law or international law. In order to come under international law of armed conflict, the conflict itself on the one hand and the rebellious, insurgent or resistant group on the other hand, must meet several characteristics set out by conventional international law, customary rules and/or international jurisprudence which are in fact conditions for the hostilities in question to fall into the category of armed conflict under international humanitarian law. These conditions are set out in common Article 3 of the Geneva Conventions of 1949.

According to Article 3 common to the four Geneva Conventions of 1949: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions [...]". The article goes on in its paragraphs 1 and 2 to detail the various provisions which must be applied by the parties to the non-international conflict, specifying that these parties are sovereign States or armed groups without international statute.

Although common Article 3 of the four Geneva Conventions of 1949 mentioned above does not define the characteristics of the conflicts and of the groups concerned, in order to claim the application of stated rules of international humanitarian law, the Additional Protocol II to the Geneva Conventions, adopted on 8 June 1977, defines in its Article 1 that such Protocol "develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application." Paragraph 1 of the Article gives further specifications in relation to the "dissident armed forces"; "the conflicts which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups" should be "under responsible command". These insurgent or rebel dissident armed forces exercise "such control over a part of its territory as to enable them to carry

out sustained and concerted military operations and to implement this Protocol.” Paragraph 2 also provides an important clarification which makes it possible to identify the type of forces or organized groups in question. Protocol II specifies indeed that it “shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”

What emerges from these provisions is that the non-State entity which claims the application of international humanitarian law, laid down in the Geneva Conventions, in particular the common Article 3 and Protocol II, must have an “organization” with a “responsible command”, while exercising a “control over a part of its territory”, “to enable [...] to carry out sustained and concerted military operations” et “to implement [the] Protocol”. It must therefore be examined whether the PKK, which requests for the qualification of non-international armed conflict and demands the application of international humanitarian law, meets those criteria. To this end, the PKK must show its organizational qualities and its capacities to conduct large-scale military operations over a prolonged period of time, thus moving away from situations of internal disturbance and isolated acts which are exclusive of situations of armed conflict.

Before examining whether the criteria are met by the PKK, it should be noted that the provisions of Article 3 common to the four Geneva Conventions, developed by the additional Protocol II of 1977, were applied, when needed and where appropriate, by international organizations and by international courts. (See references in: *Droit international humanitaire coutumier*, Volume I: règles. J-M. Henckaertset L. Doswald-Beck; Bruylant et CICR, 2006, Bruxelles). For instance, Article 8 § 2 f of the Rome Statute of the International Criminal Court (ICC) states that non-international armed conflicts “take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.” In addition, no State denies in general the existence of such customary norms. The result is that they are consequently part of international customary law, so that they apply to the non-international armed conflict even when one of the parties, State or armed group, rejects their application in a particular case or has not ratified the Protocol II or the ICC Statute. The criteria mentioned above have been also applied by the International Criminal Tribunal for the former Yugoslavia: “The two determinative elements of an armed conflict, intensity of the conflict and level of organization of the parties, are used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law” (TPIY case Tadic, Trial Judgement, § 562) (See also Prof. E. David’s consultation submitted to the Tribunal).

In the case of “Haradinaj et al.” of 29 November 2012, the TPIY mentions the various aspects characterizing armed groups which are subject to come under the application of international humanitarian law: “They are factors signaling the presence of a command structure; factors indicating that the armed group could carry out operations in an organized manner; factors indicating a level of logistic, factors relevant to the armed group’s level of discipline and its ability to implement the basic obligations of Common Article 3; and factors indicating that the armed group was able to speak with one voice.”

This analysis is in line with the internationalists’ doctrine (David, E., *Principes de droit des conflits armés*, Bruylant, 2012, Brussels. See many references in *Droit international humanitaire coutumier*, volume I, Bruylant, CIRC, 2006, Brussels).

Examining the hostilities which have taken place since 1984 on Kurdish territories of Turkey, their intensity, their duration and the characteristics of the parties of these hostilities, the Tribunal can

affirm that the armed conflict which opposes the Turkish State's authorities to the Kurdish political-military organization, the Kurdistan Workers' Party or PKK, is a non-international armed conflict which meets the criteria contained in the conventions, the jurisprudence and the doctrines above mentioned. The Tribunal shall verify such legal characterization both for the conflict itself and for the PKK as organization.

With respect to the conflict. This conflict, which has lasted since 1984, with a few periods of truce or ceasefire declared by the PKK, is a long-standing conflict, since many military actions have been conducted for many years by the PKK and by the Turkish State armed and security forces. This conflict is characterized by a high intensity, insofar as the two parties carry out every year multiple military action, among them for instance the attacks against the Turkish forces and institutions by the PKK or the attacks by Turkish armed forces over several regions of the Turkish territory and especially over areas mainly populated by Kurdish people. Turkish military and security forces carried out large-scale military operations by isolating large areas of the territory, regrouping populations and bombing villages, particularly in the Diyarbakir region. Turkish authorities declared long lasting curfews, extended over a long period of time. The Tribunal considers, in the light of these elements, that this is an armed conflict as it is understood under international humanitarian law, in particular by the common Article 3 of the Geneva Conventions of 12 August 1949, by Protocol II Additional to those Conventions of 8 June 1977 and by international jurisprudence. This conclusion is also confirmed by various elements which characterize the PKK as the other party of the conflict.

Regarding the PKK, there is no doubt that this organization meets all the criteria that allow it to be considered as a political-military organization, which carries out an armed struggle against Turkish security services, army and authorities, towards the realization of the right to self-determination of the Kurdish people. The large number of military operations conducted for many years, the large scale of these operations and the variety of locations, cities and centers involved, together with the number and size of the military operations lead by the Turkish Government, show that this constitutes undoubtedly, as the Tribunal has indicated above, a large-scale non-international conflict. The conflict is not of an international character since it takes place mainly on the territory of a State, and the PKK is not a subject of international law, which, in addition, it did not claim before the Tribunal. Moreover, Article 3 common to the Geneva Conventions of 12 August 1949 states in its last paragraph that its provisions "shall not affect the legal status of the Parties" so that its application and more generally the application of international humanitarian law arising therefrom do not necessarily confer to the PKK the quality of subject of international law. Without it being necessary to discuss more the non-international character of the conflict, the Tribunal has examined the elements which characterize the organization, the structures, and the operation of the PKK to determine if this organization meets the conditions set by international humanitarian law to be regarded as a part in a non-international armed conflict.

As a result of this analysis, it appears to the Tribunal that the PKK is an organization with internal structures, with national, regional, and local persons in charge. The PKK structural hierarchy sets policies and gives instructions which are respected by the members of the organization and even by most of the Kurdish population. The organization carries out large-scale operations obliging the Turkish Government to mobilize thousands of soldiers and recruits over long periods of time. (See on this: Yildiz, K., and Breau, S. *The Kurdish Conflict: International Humanitarian Law and Post-Conflict Mechanisms*; London and New York, Routledge, 2010). Given the PKK military capacity, reported by analysts and observers, the Permanent Peoples' Tribunal confirms that, during the conducted hearing, the PKK representatives reported many operations against the Turkish armed

forces. Several witnesses mentioned organized PKK actions which were meant to bring relief to the populations, showing at the same time, this organization's proximity to the population and its representativeness.

The PKK enforces on the ground strategic decisions made by the leadership and leader Abdullah Ocalan, concerning in particular the ceasefire, for example the one in 2013. Furthermore, the Tribunal observes, that on several occasions, before the call to the peace process in 2013, the PKK had offered a ceasefire in 1993, in September 2000, in August 2004 and in October 2006, showing, at the very least, a continuity in its strategy which aims at obtaining from the Turkish Government the recognition of the right to self-determination of the Kurdish people through peaceful means to the extent possible.

In 2013, the decision of the organization to conduct negotiations with the Turkish Government to find political solutions for this conflict was seriously carried out by PKK officials, it was respected by PKK activists and it was supported not only by the majority of the Kurdish population but also by most of the Turkish population, as shown by the score obtained by the political party supporting the claims of the Kurdish people at the legislative elections, called during the ceasefire period. The Permanent Peoples' Tribunal has conducted hearings and questioned witnesses who coordinated such negotiations for the PKK. Some documents attest that the Turkish Government negotiated with PKK officials to find political solutions and put an end to the armed conflict, showing that also the Turkish authorities recognized de facto the representativeness and the organization's willingness to put an end to the hostilities and build peace.

PKK officials acceded to the Geneva Conventions of 1949 and committed themselves to respect international humanitarian law. The PKK also confirms its willingness to respect the international humanitarian law by engaging, through the Swiss NGO *Geneva Call*, to dismiss all use of anti-personnel mine and the recruitment of child soldiers. PKK's commitment meets exactly the basis and the spirit of the international humanitarian law's provisions, which require, in order to be a party of a non-international conflict, according to common Article 3, an organization with the will and the ability to respect and enforce, in a responsible manner, the international humanitarian law throughout the hostilities, both with regard to military operations and to the protection of civilian populations.

Given all these elements, and for these reasons, the Permanent People's Tribunal considers that the armed conflict between the authorities, the armed and security forces of the Turkish State and the armed forces of the PKK on Turkish territory and especially in areas populated for the most part by Kurdish people, constitute a non-international armed conflict, subject to the rules of international humanitarian law.

VI. QUALIFICATION OF THE FACTS

It results from the debates and from a close examination of the facts presented during the hearing that the right to self-determination of the Kurdish people, as defined in Article 1 common to both Covenants of 1966 (on civil and political rights, and on economic, social, and cultural rights) was violated during the recent history of the relations between the Turkish State and this population. Indeed, Article 1 common to the two Covenants states that “all peoples have the right to self-determination”, which includes the free choice of political status and freedom of economic, social, and cultural development. The Article recalls thereafter the right of the people to the freedom to dispose of their wealth and their natural resources, and the obligation of the States parties to the Covenant to “promote the realization of the right of self-determination, and [to] respect that right [...]”.

It has been alleged and demonstrated, during the two days of hearing, that Kurdish citizens have been systematically excluded from the economic and political decision-making processes. The behavior of the State has aimed at a complete destruction of Kurdish culture, by banning public usage of Kurdish language, by systematically prohibiting Kurdish political parties and by targeting and imprisoning such parties’ leaders or activists. Likewise, Kurdish media have been prohibited or targeted, and many journalists imprisoned.

This systematic denial of the participation of Kurdish citizens or of Kurdish people to the political, economic, and cultural life of the country perpetrated for decades by the Turkish State constitutes a violation of common Article 1 of the two Covenants, i.e. of the right to self-determination. They are the cause of the armed conflict which opposes, since 1984, the Turkish State and a part of the Kurdish people, and which revolves around the Kurdistan Workers’ Party, PKK. They are also the cause of the events which took place in Kurdish cities, in 2015 and 2016, the period the indictment has referred to.

The Tribunal must therefore examine whether, in the time period considered, the facts presented during the hearing constitute war crimes, as defined by Article 3 common to the four 1949 Geneva Conventions, and if they were committed by the Turkish State, the Turkish armed forces or some leaders of the State officials or the armed forces.

Article 3, common to the four Geneva Conventions of 12 August 1949, applicable to this case, states: “In the case of armed conflict not of an international character [...] each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- 1) Persons taking no active part in the hostilities [...] shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;

- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2)The wounded and sick shall be collected and cared for.”

It was established that 42 civilians were killed, between 6 and 8 October 2014, during demonstrations against the Turkish Government to denounce its position during the siege of Kobane. On 5 June 2015, a bomb attack in Diyarbakir, directed against a meeting of HDP’s activists resulted in 5 casualties; on 20 July 2015, the bombing of Suruç killed 33 people; on 10 October 2015, the bombing in Ankara of a peace meeting, to which HDP, several NGOs, trade unions and activists were taking part, resulted in 100 deaths.

Between August 2015 and January 2018, multiple curfews (at least 289 officially confirmed) were imposed on the population in 11 cities and at least 49 districts of Turkey, affecting a population of more than 1.800.000 people, depriving them of many of their fundamental rights. Despite Turkish Government’s claims, according to which these operations were aiming to fight terrorist activities, it can be argued that these operations were in fact war operations against Turkish cities and their inhabitants. The applicable laws are the laws of war and the crimes committed are war crimes, as defined in common Article 3 to the Geneva Conventions of 1949. They apply for the period considered and, in particular, in the south-east of Anatolia, between the second half of 2015 and the first half of 2016.

It has been, indeed, established that the “armed group PKK” meets the requirements of a party to armed conflict, as defined by the ICRC (International Committee of the Red Cross): a certain level of organization, a command structure, and the capacity to implement international humanitarian law.

Expressions of protest by the population were the consequence of the interruption of the peace process and could not by any means be regarded as terrorist acts. Militarization by Turkish authorities of the urban confrontations, by the intervention of special forces and the use of artillery and heavy weapons, has caused massive destructions, well beyond what could cause a simple police operation. The consequences of these actions constitute indeed war crimes. Attacks on civilians bearing white flags and on civilians in general (January 2016), attacks at basement shelters, for instance in Cizre, as well as voluntary assassinations, torture, massive destructions of properties not justified by military necessity, shall be qualified also as war crimes.

The systematic destruction by artillery bombardments of buildings, historical monuments, houses, mosques during the confrontations against Kurdish activists in the south of the country, between 9 September 2015 and 10 March 2016, and the decision taken by the Council of Ministers on 21 March 2016 to expropriate 6.292 plots of land out of 7.714 in Suriçi also constitute violations of the Geneva Conventions.

The hearing also revealed that the Turkish State has committed, organized, or covered-up crimes of ordinary criminal law, or State crimes against individuals or Kurdish associations, within and outside its territory. The most recent case is that of the murder of three Kurdish women activists in

Paris, on 9 January 2013: Fidan Dogan, Sakine Cansiz et Leyla Saylemez. The investigation has shown the implication of senior officers of the Turkish Secret Service, MIT.

The debates have shown that this was not an isolated case and that, in particular during the years 1990, targeted killings, extrajudicial executions and forced disappearances were common practice in Turkey. High figures (940 cases of forced disappearance, among which a part became subject of investigations by the UN Working Group on forced disappearances, more than 3.200 killings or extrajudicial executions) and various investigations have demonstrated State involvement, often at a higher level, as in the case of the assassination of Kurdish intellectual and poet Musa Anter, on 20 September 1992, attributed to Turkey's secret services (JITEM, Gendarmerie Intelligence Organization).

DELIBERATION

In view of the compelling evidence which has been submitted, taking into consideration the technical reports which have been presented and discussed throughout the hearing, and on the basis of the existing consensus regarding the principles and the universally applicable doctrine of international law related to the questions addressed in this Session, the Jury of the Permanent People's Tribunal has unanimously adopted the following decisions:

1. The Turkish State is recognized as responsible for the denial of the Kurdish people's right to self-determination, the imposition of Turkish identity, the exclusion of the Kurdish people's identity and presence, and the repression of its participation in the political, economic and cultural life of the country, interpreted as a threat to the Turkish State's authority.

2. Based on the detailed evidence submitted, in the period from 1 January 2015 to 1 January 2017, , the Turkish state has committed:

- War crimes in the towns of Kurdish South-East Anatolia, including massacres and permanent displacement of Kurds, further revealing the intent to physical elimination of part of the Kurdish people.
- State crimes, including targeted assassinations, extrajudicial executions, forced disappearances, committed by different branches of the State's security forces and secret services, in Turkey and abroad, particularly in France. The absence of any serious investigations of the underlying responsibility of Turkish authorities is consistent with an organized policy of impunity supported by the State.

3. The Turkish State President Recep Tayyip Erdoğan bears direct responsibility for the war crimes and State crimes committed in the South-East Anatolian cities. Moreover, with his repeated and indiscriminate qualifications of the Kurds living in the conflict areas, as well as of their chosen representatives, as "terrorists", President Erdoğan has incited and legitimized the disproportionate and indiscriminate violence of the operations against both the armed Kurdish fighters and the civilian population.

General Adem Huduti, head of Turkey's second army, also bears direct responsibility for the above crimes, as the main architect of the combined operations of the military, the police and the armed militias. The disproportionate use of force caused severe human loss amongst civilians not involved in military operations, as well as the deliberate and massive destruction of historical and religious sites, and civilian infrastructures.

VII RECOMMENDATION

The Permanent Peoples' Tribunal was called to evaluate the events committed between June 1, 2015 and January 31, 2017 in many South-East Anatolian cities with majority Kurdish inhabitants, as well as other crimes committed in Turkey and abroad, starting in 2003, when Recep Tayyipp Erdogan assumed the office of Prime Minister.

The Tribunal has not been able to deal with events following and in particular the offensive launched in January 2018 by the Turkish armed forces against the Afrin enclave in Syria and the Kurdish region of Rojava. In view of these further developments and the events which took place during the session held in Paris on 15 and 16 March 2018, the Court made the following recommendations.

1. Turkey must immediately end all military operations carried out by its army in Syria and must withdraw its troops to within its national borders.

The Turkish offensive, launched against the Afrin enclave and the other areas of Syria where there is a majority Kurdish population, is a clear violation of international law, contradicting the principle of the non-use of force as embodied in Article 2, paragraph 4, of the Charter of the United Nations and it constitutes a crime of aggression, pursuant to Article 5 of the Rome Statute of the International Criminal Court.

The facts show that military operations against heavily populated cities or regions amount to war crimes, pursuant to art. 8, paragraph 2, of the Rome Statute of the International Criminal Court, such as murders, torture, massive destruction of property not justified by military operations, deportation or forced transfer of populations. Therefore, these facts constitute grave breaches of the Geneva Conventions of 12 August 1949, especially of art. 147 of the IV Convention, to which Turkey is bound.

2. Turkey is obliged to investigate and punish the responsible persons for war crimes, ascertained by the Permanent Peoples' Tribunal, committed in southeastern Anatolia during the period from 1 June 2015 to 31 January 2017.

This on the basis of the conventional obligation referred to the rule in common to the four Geneva Conventions of 12 August 1949 (Article 49 of the I, Article 50 of the II, Article 129 of the III and Article 144 of the IV), which provides that: *"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts"*.

This obligation was reiterated by art 85 of the First Additional Protocol adopted in Geneva on 8 January 1977 and it extends also to the case of non-international armed conflicts, as foreseen by the II Additional Protocol.

The Permanent Peoples' Tribunal is aware that the determining of the crimes and the punishment of their perpetrators will never be possible unless the mechanisms and guarantees of the rule of law are restored, first of all the independence of the judiciary and the freedom of information. In Turkey, after the failed coup of July 2016, 4,279 magistrates (judges and prosecutors) were dismissed, 3,000 of them are in pre-trial detention, hundreds of media have been closed down (radio, newspapers, websites) and currently 150 journalists are detained, while thousands of teachers have been removed from their posts at universities and all levels in schools.

These events prevent the exercise of legal control against abuses committed by government agents, which can be implemented only if the independence of the judiciary is ensured and if a free and independent mass media that exercises influence on public opinion is guaranteed.

Therefore, the PPT, supporting the statement of the Platform for an independent Judiciary in Turkey, considers that:

3. Turkey must restore the rule of law, release still-detained magistrates and journalists, restore the rights of teachers and magistrates (judges and prosecutors) who have resigned from July 2016, restore freedom of press and information, end the state of emergency and fully implement the European Convention on Human Rights.

The war crimes and the crimes against humanity determined by the Court derive from the Turkey state's refusal to recognize the Kurdish people's right to self-determination, which led Turkey to ban the use of the Kurdish language in public life for years, to persecute Kurdish political parties and their leaders, to curb the Kurdish media, to imprison Kurdish politicians and journalists. This scale of discriminatory measures led to the emergence of various forms of resistance, including guerrilla actions conducted by the Kurdistan Workers Party, PKK.

The military offensives launched in the south east of Anatolia and extended to the Kurdish regions across the border, are justified by the Turkish government with the claim that it is suppressing terrorism and protecting the national territorial and political integrity. However, the security of the State cannot be assured by denying the identity of a people, destined to live with Turkish people within the given borders. On the contrary, it is only by recognizing the identity of the Kurdish people that it is possible to end the conflict and a long period of conflict and suffering for both parties.

Ending the conflict is the only way to guarantee security. It should be noted that the recognition of the right to self-determination of the Kurdish people does not involve any form of secession because the principles of the border's inviolability and respect for the territorial integrity of each State cannot be questioned, as affirmed by the Helsinki Final Act of 1975. Therefore, the recognition of the Kurdish people's identity and dignity and their right to live peacefully with the other people living in the territory of the Turkish state is the key to ensure security, freedom, peace and justice for all the citizens of Turkey. As a result, the PPT considers that:

4. Prior immediate proclamation of all military activity truce, Turkey must resume negotiations in good faith for a peaceful solution to the conflict - interrupted on October 30, 2014 - and complete them within a reasonable time frame.

During the negotiations, measures must be taken to ease the climate of hostility between the parties, in particular the release of prisoners, the re-opening of newspapers and other media, the restoration of local representatives removed from their positions. It is not for the PPT to indicate specific solutions that allow the Kurdish people's right to self-determination to be accorded to the needs of cohabitation and good administration within the Turkish state.

It must be noticed that such solutions are easy. One can point to the special status of autonomy granted by the Italian Republic to the Region of Alto Adige / South Tyrol, characterized by the presence of a strong ethnic group of Germans and Austrians. At the conclusion of the peace negotiations, an amnesty must

follow for all crimes committed by both parties, both in Turkey and abroad. Only in this case Turkey could be exonerated from the obligation to ensure the punishment of those responsible for war crimes and against humanity determined by the PPT, according to point 2.

5. At the conclusion of the peace agreement an amnesty must be issued for the crimes committed by all parties during the conflict and all still-detained political prisoners must be released.

In conclusion, the tragedy that disrupts the South East of Anatolia and is causing incalculable suffering to the Kurdish people is not the result of a destiny that cannot be avoided. It is the product of the errors, burdened by time, of an unthinking dogma of nationalism, which, in the past, provoked the Armenian genocide.

The Turkish and Kurdish people can avoid this fate, transforming this policy totally and eliminating its origins. Where today the fatal rituals of hostility and denial are carried out, tomorrow could see a restoration and flourishing of justice, friendship and peace.

PERMANENT PEOPLES' TRIBUNAL

Founder : LELIO BASSO (ITALY)

President :

PHILIPPE TEXIER (FRANCE)

Vicepresidents :

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His Excellency İsmail Hakkı Musa
Ambassador of the Turkish Republic in Paris (France)
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Email : ambassade.paris@mfa.gov.tr

Rome, 28th February 2018

Your Excellency,

The present letter is send to you in your capacity of official representative of the Turkish Republic to inform you that **the Permanent Peoples Tribunal will hold a session dedicated to “Turkey and the Kurds” on 15 and 16 March 2018 in Paris, Bourse du Travail, salle Eugène Hénaff, 29 Boulevard du Temple, 75011 Paris.**

The program of the sessions is attached.

The Prosecution announced that it will submit to the Permanent Peoples Tribunal evidence that:

- The Turkish Republic has committed in the period of 1st June 2015 to 1 January 2017 war crimes during the confrontations that occurred during that period in several cities in South East Anatolia with a majority of Kurdish inhabitants.
- The Turkish Republic has organised, ordered an/or facilitated common crimes such as bomb attacks, targeted assassinations, kidnappings etc. both on the national Turkish soil and abroad i.a. in various European countries, crimes that were committed against

representatives, press organs and institutions representing the Kurdish people living in Turkey.

The Prosecution announces that it will request the Tribunal:

- To find the Turkish Republic as a legal entity of public international law responsible for such wrongful acts and to make recommendations to all other States on how to hold the Turkish Republic and its leaders accountable for these acts.
- To hold the Turkish State President M. Recep Tayyip Erdoğan responsible for the crimes committed in the South East Anatolian cities in 2015-2016.
- To hold general General Adem Huduti head of Turkey's second army at the material time and who lead the military operations against Kurds in 2015-2016 responsible for the same crimes.

The Turkish Republic, the Turkish State President M. Recep Tayyip Erdoğan and General Adem Huduti are hereby invited to participate in the Session of the Permanent Peoples Tribunal to be held in Paris on 15 and 16 March, to hear the evidence and the submissions of the Prosecution and to present their arguments and defence through any duly authorised representative.

Should you need any further information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to be 'Gianni Tognoni', written in a cursive style.

Gianni Tognoni

Secretary general

Annex 2

Permanent Peoples' Tribunal on Turkey and Kurds

15-16 March 2018

Bourse du Travail, salle Eugène Hénaff, 29 boulevard du Temple 75003 Paris (France)

March 15

09.00- 09.30: **Welcoming participants**

09.30 – 10.45: **Introductory session**

09.30 – 09.45: Presentation members Court

09.45 – 10.00: Verification summons Turkish Republic

10.00 – 10.50: Opening statement Prosecution

10.50 – 13.10: **Contextualisation: Right to Self determination**

10.50 – 11.10: Principles

11.10 – 11.30: History

11.30 – 11.50: Political Rights

11.50 – 12.10: Disposition of resources / Economic Rights

12.10 – 12.30: Cultural Rights – Women Rights

12.30 – 13.50: **Lunch**

13.50 – 16.00: **Session 2 – War Crimes**

13.50 – 14.10: Session introduction by Prosecution

14.10 – 14.20: Legal Framework

14.30 – 14.40: Overview

14.40 – 15.20: Cizre events

15.20 – 16.00: Nusaybin events

16.00 – 16.20: **Coffee Break**

16.20 – 18.00 : **Session 2 (continuation)**

16.20 – 17.20 : Sur events

17.20 – 18.00 : Sirnak events

March 16

09.00 – 09.30: **Welcoming participants**

09.30 – 11.00: **Session 2 (continuation)**

09.30 – 10.00: Roboski

10.00 – 10.20: Violence against Women

10.20 - 10.40: **Coffee Break**

10.40 – 12.20: **Session 3 – State terrorism**

10.40 – 11.00: Session Introduction by Prosecution

11.00 – 11.20: Death Squads

11.20 – 11.40: Death Squads The case of Musa Anter

11.40 – 12.00: Bombings: the attack on Ozgur Gundem and DEP

12.00 – 12.20 False flag actions: statements of former members of the security forces

12.20 – 13.30 : **Lunch**

13.30 – 16.30 : **Session 3 (Continuation)**

13.30 – 13.50 : False Flag actions : Semdinli

13.50 – 14.10 : False Flag actions : Village guards Guclu Konak

14.10 – 14.50: Political Assassination in France

14.50 – 15.30: Targeted killings – Paris case

15.30 – 15.50: Targeted killings (other attempts in Germany and Belgium) 3

15.50 – 16.10: Kidnapping of Abdulla Ocalan

16.10 – 16.30: Support terrorist organisations in region

16.30 – 16.50: **Coffee break**

16.50 – 17.10: **Closing remarks Prosecution**

17.10 – 17.30: **Defence or presentation of Turkish legal framework**