



**71ST SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY
SIXTH COMMITTEE
AGENDA ITEM 78
REPORT OF THE INTERNATIONAL LAW COMMISSION
[CLUSTER II]**

STATEMENT BY

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Mr. Chairman,

I would like to begin by thanking the Chairman of International Law Commission, Mr. Pedro Commissario Afonso, for his lucid introduction of each chapters under Cluster II of our discussion.

My Delegation wishes to submit our comments on Chapter VII, VIII and IX of the ILC Report.

On the work of Crimes against Humanity, I would like to thank Special Rapporteur Mr. Sean Murphy for his Second Report, as well as thanking the Secretariat for its deliberative and well-prepared memorandum.

Indonesia takes note of the newly adopted four draft articles with its respective commentaries thereto pertaining to criminalization under national law, establishment of

national jurisdiction, preliminary measures when alleged offender is present and fair treatment of the alleged offender.

Under Indonesia's Law Number 39 Year 1999 and Law Number 26 Year 2000, Indonesia criminalizes crimes against humanity and the crime of genocide. In fact, we have criminalized 9 (nine) out of the proposed 11 (eleven) acts of crimes against humanity in the draft articles. We have also put in place the legal framework for the protection of witness and victims of crimes against humanity and genocide, as well as prescribing non-prosecutorial approach to cases of crimes against humanity and genocide, among others, in the forms of consultation, negotiation, mediation, and expert assessment. These approach are carried out by the National Commission of Human Rights, which under our legal system, is also equipped with investigative powers for cases of grave violation of human rights. Indonesia is looking forward to provide the Commission with information regarding our domestic legislation on this matter. In particular, nationally we are currently undertaking fundamental revision to the Indonesian Penal Code, to which we are going to codify various offences including crimes against humanity.

Indonesia will steadily continue to study the ILC's ten draft articles and its respective commentaries, to which we are still developing our views. And in light of the legal intricacies implicated by this topic, we encourage the Commission and the Special Rapporteur to cater its work with careful and comprehensive consideration taking into account states' views on this matter.

On the work of protection of atmosphere, we thank the Special Rapporteur Mr. Shinya Murase for its diligent work as exemplified in his reports under this topic. We also note the provisional adoption of draft guidelines 3, 4, 5, 6, and 7, together with the fourth preambular paragraph and its respective commentaries thereto in the third report.

Indonesia is attaching great importance on this topic and My Delegation is pleased to inform you that yesterday Indonesia have deposited its instrument of ratification of the

Paris Agreement. That made us the 89th country to do so. Without being complacent, now that we have legal framework in place, Indonesia is looking forward to walk our commitments and obligations owed to international community.

As with the draft articles, we take seriously the international legal obligation to protect not only that of atmosphere but to environment in general.

Draft guidelines 3, 4 and 8 altogether concerns respectively with the obligation to protect atmosphere, obligation to undertake environmental impact assessment and obligation to cooperate. We take note that these obligations are inseparable and mutually reinforcing each other. Importantly, they form the essential pillars of atmospheric protection. Obligation to protect, in particular, entails the obligation to prevent and to carrying out enforcement measures, that take into account, cooperation with other states for its effective performance thereof.

As a matter of law, enforcing these obligations comes with prescription of relevant domestic legislation, criminalization of acts that cause atmospheric pollution, international cooperation, and importantly effective enforcement of criminal, administrative or civil measures against individual and legal persons as such.

Indonesia takes these obligations seriously as exemplified from our response to atmospheric pollution caused by forest fires in recent years. We are continuing relentlessly to undertake systematic and concerted policy efforts as well as effective law enforcement measures to ensure that Government do not stand idle towards irresponsible actors that cause atmospheric pollution as well as carrying out the necessary mitigation efforts. As of today, Indonesia had subjected about 30 (thirty) companies to administrative sanctions over the occurrence of contemporary forest fires. Those found guilty will be given warning and could have their permit revoked. There are also ongoing civil lawsuits against 10 (ten) companies and numerous others. On policy basis, Indonesia is applying a temporary moratorium on permits for forest management, palm plantations and management of peat lands.

Mr. Chairman,

International cooperation in the protection of atmosphere is imperative, especially law enforcement cooperation concerning offences against atmosphere that is of transnational nature and carried out by corporations.

Let me explain why such an international cooperation is indeed critical. Indonesia is currently considering the idea to establish cooperation with countries or foreign jurisdictions to which the corporations that allegedly involved in atmospheric pollution might have place of business, management or assets, taking into full account the multinational character that these companies might have.

It is our position that these countries or jurisdictions have also due diligence duty on their own and by virtue of international law duty to cooperate in ensuring that no safe haven is accorded to these companies, in order to consequently preventing these companies from enjoying the benefits or proceeds stemming out from their irresponsible business practices in other states. Therefore, good will and good faith among countries is of paramount importance when it comes to enforce criminal, administrative, and civil sanctions to such corporations involved in offences against atmosphere that is transnational in nature. Mr. Chairman, we expect that the draft guidelines can also reflect this concern and Indonesia is prepared to give contribution and work with the Commission on this matter.

Indonesia is truly concerned with the plight suffered by our own people as well as the citizens of our fellow neighboring countries caused by forest fires. Indonesia, in this regard, strenuously carrying out mitigation efforts towards the forest fires' haze which in recent years were exacerbated most of the time by extreme weather and climate conditions. Mr. Chairman, all of these endeavor, are ways and instances to which states can substantiate their obligations due to atmosphere. We are looking forward to contribute to the work of the Commission by providing our state practice on this regard.

On the work of jus cogens, Indonesia continues to closely follow the work of the Commission. We would like to thank Special Rapporteur Mr. Tladi for his diligent work in such a delicate subject. Hence, we welcome his first report on this matter. As the topic is evolving, we are also developing our views and prepared to contribute our comments to this work.

I thank you.

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