

Statement by
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**On Agenda Item 81: Report of the International Law Commission on its
work at its Sixty-ninth session (2017)**
Cluster 1 (Chapters I-V & XI)

**At the Sixth Committee of the United Nations General Assembly
at its 72nd session**

Mr. Chairman,

As I am speaking first time in the Sixth Committee during the current session, I take this opportunity to congratulate you on your election as the Chairperson of this important Committee. Also I congratulate other Members of the Bureau of the Sixth Committee on their election.

Mr. Chairman,

India joins others in thanking Mr. Georg Nolte, Chairman of the Sixty-ninth session of International Law Commission, for the comprehensive introduction of the Report and for guiding the work of the Commission at this session. We also thank all Members of the Commission for their valuable contribution to the work of the Commission at this session.

Mr. Chairman,

Among the topics of Cluster 1, our focus will be on some issues concerning “Crimes against humanity” and “Provisional application of treaties”.

Mr. Chairman,

We would like to register our appreciation for the Special Rapporteur, Mr. Sean D. Murphy for his Third Report on the topic, ‘Crimes against humanity’. The Report addressed issues like extradition; non-refoulement; mutual legal assistance; victims, witnesses and other affected persons; relationship to competent international criminal tribunals; federal State obligations; monitoring mechanisms and dispute settlement; Concealment of crimes against humanity; Immunity; Amnesty. The Special Rapporteur also proposed seven draft articles and a draft preamble.

The Commission considered and adopted two reports of the Drafting Committee on the draft preamble, draft articles 1 to 15 with commentaries, and the draft annex. The Commission decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft articles on crimes against humanity, through the Secretary - General, to Governments, international organizations and others for comments and observations by 1 December 2018.

Mr. Chairman,

Accordingly, while we will be submitting our comments and observations by the time prescribed, we reiterate our position concerning this topic in general that, considering the existing international mechanisms, including the

International Criminal Court, available to deal with the subject matter of this topic including the measures relating thereto which are suggested in the draft articles, the necessity of Commission's work on this topic is still not clear. In our view, any work on this topic could lead to duplicating the efforts already undertaken in the existing regimes.

Mr. Chairman,

Turning to the topic "Provisional application of treaties", we appreciate the efforts of the Special Rapporteur, Juan Manuel Gómez Robledo, put in the study of this topic that has resulted in the submission of four reports. At the current session, the Commission provisionally adopted the draft guidelines 1 to 11 produced by the Special Rapporteur. The Commission also adopted the commentaries to the draft guidelines at the current session.

The Commission also had before it a memorandum, prepared by the Secretariat, reviewing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, that provide for provisional application, including treaty actions related thereto. It will be taken up for consideration at its next session by the Commission.

Mr. Chairman,

We are of the view that a nation's political, social and legal system has greater role in the field of provisional application of a treaty, including the manner of expressing consent to a treaty. India being a dualistic State, treaties do not automatically form part of the domestic law. Their provisions become applicable only as a result of their acceptance by internal procedures.

Mr. Chairman,

We heard yesterday a note of caution from one worthy delegate concerning new topics being proposed within the ILC. In this context, you will appreciate that the principles of customary international law are currently under discussion of the Commission in diverse manner, such as identification of customary international law, pre-emptory norms of international law, i.e., *jus cogens*, and a new topic being proposed in the name of general principles of international law. We, in principle, are not opposed to holding discussion on different categories of principles of international law. We feel it better if such a discussion is undertaken under one broad heading as a consolidated topic, covering all categories of principle of international law and not in a piecemeal fashion.

Mr. Chairman,

We are happy to note that the ILC would commemorate its 70th anniversary in New York in May 2018. The New York session would provide the opportunity to enhance interaction of ILC Members with the Sixth Committee delegates, which is a welcome development.

Thank you.

Thank you.