



Statement By

Delegation of the Republic of Indonesia to the United Nations

at the Sixth Committee

on Agenda Item 81:

“The Report of the International Law Commission on the work of its Sixty-ninth Session (Cluster I)”

New York

25 October 2017

Mr. Chairman,

Let me start by expressing our gratitude to the Commission for the comprehensive report of its sixty-ninth session. Indonesia takes note of significant progress and developments on several topics, which provide a sound basis for discussion.

Indonesia has always been supportive of the work of the Commission on many important aspects of international law in its effort to contribute to ensuring legal certainty in international relations.

Mr. Chairman,

Allow me to make few comments and observations on the issue of Crimes against Humanity and the provisional application of treaties.

On the work of Crimes against Humanity, I would like to thank Special Rapporteur Mr. Sean Murphy for his Third Report, and express appreciation for his excellent work to bring to a successful conclusion the first reading of the draft articles on crimes against humanity, including the commentaries.

Indonesia appreciates the Commission's effort to engage member states through information and comments requested. It demonstrates the Commission's cautiousness and efforts to accommodate the view of member states, which we consider to be crucial on this sensitive issue.

Turning to the substantive part of the draft articles, my delegation appreciates that the draft covers both prevention and punishment of crimes against humanity. The prevention aspect undeniably plays a pivotal role in ensuring that a country is well-equipped, in all aspects, to prevent the commission of the crime and ensuring that should the crime occur, all the necessary tools are in place.

But we need to be cognizant that the prevention aspect is not limited only as prescribed in Article 4 of the draft Article which cover legislative, administrative, judicial measures. The draft does acknowledge the extensive nature of preventive measures, by using the phrase "... other preventive measures...".

Since the draft article is meant to be a legal instrument, we suggest that in addressing the preventive measures, the draft shall be more specific and prescriptive, elaborating on all aspect of relevant preventive measures. It would be legally sound to remove the words "other preventive measures", for that may lead to multi-interpretation by states and result in legal uncertainty or ambiguity.

Mr. Chairman,

Still on the preventive measures, Indonesia is pleased to see the inclusion of the *non-refoulement* into the draft article 5 and considers it to be crucial. We also support the addition of "extradition" element within the *non-refoulement* principle, given the absence of uniformed practice of extradition.

As an observation concerning Article 6 of the draft articles, Indonesia has criminalized crimes against humanity. In fact, we have criminalized 10 (ten) out of the proposed 11 (eleven) acts of crimes against humanity in the draft articles. We have also put in place the legal framework to ensure that victims of a crime against humanity have the right to obtain reparation. We have also a government regulation setting the mechanism for a victim to get compensation.

Indonesia is of the view that international legal cooperation as provided in Articles 13 and 14 constitute important elements of this draft article. We share the view of the commission in its commentaries that there is currently no global or regional treaty addressing mutual legal assistance specifically in the context of crimes against humanity.

We appreciate the fact that the ILC has borrowed the provisions and principles within the UN Convention against TOC and the UN Convention against Corruption by virtue of the level of acceptance and universality the two conventions have achieved. Yet, we also need to be cautious and learn from the practices and implementation of the two conventions prior to transferring the provision as it is. One question that we need to ask is: do crimes against humanity have the same level of gravity with corruption and other transnational organized crimes?

Against this backdrop, and considering the level of gravity of crimes against humanity, we think that it is worthy of consideration to make international cooperation provisions as mandatory, particularly mandating the use of the treaty as a legal basis for extradition in a situation where a state makes extradition conditional upon the existence of a treaty.

We must learn from the facts and practices that not all countries consider a multilateral treaty to be a legal basis for extradition cooperation, thus the effectiveness of the treaty will very much depend again on the willingness to pursue bilateral treaty on extradition.

Indonesia will continue to study the ILC's adopted draft articles and its respective commentaries, to which we are still developing our position. We consider this topic to be very important as it aims to clarify the legal issues involved.

Mr. Chairman,

Now I will turn to the draft guidelines on the Provisional Application of Treaties. My delegation would like to express its appreciation to the Special Rapporteur, Mr. Manuel Gomes-Robledo for his report.

We are of the view that the 1969 Vienna Convention on the Law of Treaties is certainly the basis on which the Commission should develop a mechanism or a set of guidelines that would provide States with guidance relating to the provisional application of treaties.

We are further of the view that it would be essential to consider the relationship between provisional application of treaties and the constitutional law requirements at the domestic level for the entry into force of the treaty concerned.

We are fully aware that this issue is a challenging one for the Commission due to the diversity of national legal systems and also the lack of practices and precedents, particularly to our country.

We would like to use this opportunity to convey that the provisional application of a treaty is meant to allow for immediate response a treaty aims to address in a certain situation, irrespective of the lengthy process for the entry into force of the treaty or domestic constitutional ratification processes. Therefore, the application must be on an exceptional basis, and not to encourage States to use the mechanism more often.

An important aspect that shall be addressed within this draft guideline is the "temporary nature" of the provisional application, to prevent conflict within the domestic constitutional system. There should be certainty on the duration of the provisional application, particularly in the case of delayed entry into force or where the treaty concerned does not enter into force at all.

The last point: my delegation wishes to support guideline 11, which provides flexibility to a State to conform to its internal constitutional rules. It is indeed the sovereign right of States to decide on what is best for them concerning the provisional application of treaties.

Before I conclude, **Mr. Chairman,**

My delegation wishes to reiterate the view that in order to contribute to the work on international law, it is imperative that we continue fostering even stronger and more intensive engagement between the ILC and the 69th Committee. Last but not least, we warmly welcome the commemoration of the 70th anniversary of the Commission next year to be held in New York and Geneva, and look forward to taking part in it.

I thank You.