



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 II)"*

New York

27 October 2017

Mr. Chairman,

Thank you for giving us the floor.

Allow me to make a few comments and observations on Chapters VI and VII of the Report, under Cluster I of our discussion.

On the issue of Protection of the Atmosphere, I would first like to express the appreciation of my delegation to the Special Rapporteur, Mr. Shinya Murase, for his meticulous work as demonstrated in his reports. We would also like to extend our sincere appreciation to the commission, and in particular the Drafting Committee, for the further development of the discussions on this topic.

Indonesia attaches great importance to this subject, and would like to emphasize how vital the atmosphere is for life on earth and for the survival of humankind. Thus, the protection of the atmosphere, its natural and human environments, is indispensable.

We are pleased to note the growing attention the Commission paid to the environmental issue. This is therefore a deeply important development in the

work in the future. In this regard, my delegation would like to support the statement delivered by the Marshall Islands on behalf of the Pacific Small Islands Developing States. This is with particular reference to the point that the Commission should not restrict itself to discussing traditional topics, but should look into other pressing concerns of the international community as a whole, as it the one we have before us now "the protection of atmosphere" and also the inclusion of new topic "the legal implication of sea level rise".

On the "Protection of the Atmosphere", we are fully aware that it is a very difficult legal issue, with a number of legal instruments in place. But we must bear in our mind that those legal instruments are piecemeal, and not all of them have been warmly welcomed by states.

For such a critical issue, we are concerned about some important issues in the field of environmental law that are excluded from the deliberations of the ILC, such as the polluter pays principle; common but differentiated treatment; and several others as mentioned in the guidelines.

**Mr. Chairman,**

The Commission, with its expertise, is in a wonderful position to offer to States, to evaluate or synergize between the existing legal instruments. We believe that the Commission is the most appropriate body to close the legal gaps between these existing legal instruments. Therefore, we are of the view that the Commission be given the space and flexibility to work on this topic, in other words, the scope of work should not be restricted.

Let me give an illustration. General Assembly resolution 71/257 states the importance of increasing scientific understanding of the oceans-atmosphere interface. The resolution also confirms the effect of climate change on oceans, but as we have witnessed, the Paris Agreement of 2015 has an evident terrestrial approach, as it mentions "oceans" only once, despite the fact that oceans cover more than 70 percent of the earth's surface.

Against this backdrop, we are convinced that the ILC, with its expertise, independence and objectivity may explore and improve the environmental legal regime in a comprehensive and holistic manner, for the benefit of the mankind.

Finally, Mr. Chairman, my delegation believes it is important to incorporate in the preambular paragraph the principle of the common heritage of mankind. In our view, this powerful and symbolic principle should guide the commission in its future work and deliberations.

**Mr. Chairman,**

Moving to the issue of Immunity of State Officials from Foreign Criminal Jurisdiction, I would like to thank the Special Rapporteur, Ms. Escobar Hernandez, for her tireless work on this difficult topic. Allow me to briefly share an observation from my delegation regarding draft article 7 that was previously adopted by the Commission at its Sixty-ninth Session.

Indonesia's position is that there should be no impunity for grave international crimes.

We appreciate the fact that the Commission has been working cautiously on this sensitive and contentious topic, to strike a balance between the fight against impunity for the grave international crimes, and the need to foster inter-state relations through the principle of sovereign equality. We need to bear in mind that prosecution of officials of one country, by the courts of foreign countries, will potentially raise problems in relation to the principle of sovereign equality.

The complexity and sensitivity of the topic particularly in draft article 7 was obviously reflected in how the draft article was provisionally adopted by voting. The differing views on these important provisions, specifically concerning limitation and exception to immunity, make this provision worth revisiting.

**Mr. Chairman,**

My delegation wishes to observe that there are only a few examples of domestic laws recognizing limitations and exceptions to immunity of foreign officials, even in cases of international crimes. In the case of Indonesia, up to now, no single case relates to the limitations and exceptions, except in civil proceedings.

Finally, Indonesia is of the view that given the sensitivity and complexity of the topic at hand, it is desirable to have a more extensive study and analysis of the draft articles, and we look forward to being at the next session to see further results of the work of the ILC.

I thank you.