



**Statement by the Delegation of Indonesia
at the Sixth Committee
Agenda item 82: Report of the International Law Commission (Cluster I)
24 October 2018**

Mr. Chairman,

Let me first express my appreciation to the Chairman of the Commission for presenting the report. Indonesia would like to express its commendation to the Commission for its work during its 70th session and the progress achieved on many topics, and to the special rapporteurs for their contributions to the work of the Commission.

Indonesia remains deeply grateful to the Commission for its role in the progressive development and codification of international law, which contributes to the advancement of the rule of law at the international and national levels. We also commend the valuable interaction between delegates of the Sixth Committee and members of the Commission during the seventieth session in New York earlier this year.

We are of the view that the topics under the agenda of the Commission are worthy of thorough consideration, but we also must admit that this is not an easy task for us as there is such limited time between the presentation of the report and the convening of the current session in New York.

Mr. Chairman,

We wish to say a few words on the topic, Subsequent agreement and practices in relation to interpretation of treaty. Indonesia welcomes the impressive work of the Commission, especially the Special Rapporteur, Professor Georg Nolte, on this delicate matter, which may serve as a manual and constructive contribution to future work on treaty interpretation. We consider the detailed analysis contained in the commentary to be a useful guidance for member states.

We are also appreciative of the fact that draft Conclusion 5 has included judicial conducts as subsequent treaty practices. The role of the judiciary, which in our understanding refers to domestic courts, in the interpretation and application of law is essential, as it is distinct from the practices of other state organs, which are mostly political in nature. The product of domestic courts is widely accepted and implemented by all parties at the national level. Therefore, the role of domestic courts is significant and will provide positive contribution to the development of this regime.

On Conclusion 8, we are of the view that we must be cautious in arriving at the conclusion that the meaning of a treaty is capable of evolving over time, as there is no standard in such an interpretation, which in the end may undermine the general rule of interpretation as stated in

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Article 31. We are pleased that the commentary extensively explains, among others, that the conclusion should not be read as taking any position regarding the appropriateness of a more contemporaneous or a more evolutive approach to treaty in general.

With regards to the topic “identification of international law”, Indonesia would like to thank the Commission and the Special Rapporteur, Sir Michael Wood, for his tireless effort and quality of work in a very detailed and comprehensive draft conclusion and commentary. Customary international law is the primary source of international law and has contributed meaningfully to the development of international law and we hope that this excellent product of the ILC would contribute to identifying the existence or formation of customary international law.

We wish to support the inclusion of the persistent objector’s rule in Draft Conclusion 15. We appreciate the comprehensive and balanced elucidation in the Commentary. One of the important aspects of persistent objector, as mentioned, is the timeliness of the objection and also that the objection must be expressed internationally.

Mr. Chairman,

We will briefly allude to two topics included in the long-term program of work.

On the topic, “sea level rise in relation to international law”, Indonesia sees the merit of this important and crucial topic. Climate change places increasing pressure on archipelagic and island states, especially the risks associated with rising sea levels.

To archipelagic state and islands states, like Indonesia, oceans and seas constitute a much larger geographic area than our inland territory, which makes our level of dependence on oceans and seas to be higher than others. We have felt the impact of sea level rise and it has now become common concern and a matter of survival for many states. This is the main reason why Indonesia is organizing, at the end of this month, a ministerial level meeting of Archipelagic and Island States which share common geographical characteristics and threat, to discuss and find solutions to the impact of climate change.

We support the inclusion of this topic concerning the long-term program of work of the Commission and recommend that this issue be approached with caution due to its sensitivity, particularly in relation to the border or delimitation issue. We also stress that the deliberation not undermine the existing regime on the law of the sea under the UN Convention on the law of the Sea.

With regards to the topic, “universal criminal jurisdiction”, Indonesia wishes to reiterate its position concerning the scope and application of the principle of universal jurisdiction that ending impunity and denying safe haven to individuals who commit heinous crimes is our responsibility. Let us bear in mind that there are still divergences of position among states and we have seen only few countries which have established universal jurisdiction in their domestic law or have cases involving application of this principle. In fact, the existing practices among those few states show differences in the scope and list of crimes. Since the discussion in the Commission will rely on the elements of practices supplied by the member states, which at this stage are limited, we are of the view that it is premature to bring this issue to the ILC.

Mr. Chairman,

Let me end by expressing our gratitude to the Codification Division of the Secretariat for their valuable support and work throughout the session.

I thank you