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Statement by

The Delegation of Indonesia
at the Sixth Committee of the General Assembly
on
Agenda item 79:
"Report of the International Law Commission on the work of its Seventy-first session (Cluster I)"
October 2019

Mdm. Chairperson,

I would like to begin by thanking the Chairman of International Law Commission, Mr. Pavel Šturma, for his lucid introduction of each chapter under Cluster I of our discussion.

Indonesia commends the Commission for its work during its 71st session and the progress achieved on many topics. We further commend the special rapporteurs for their contributions to the work of the Commission.

My delegation continues to appreciate very highly, the role of the Commission in the progressive development and codification of international law.

Indonesia is 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 a limited time between the presentation of the report and the convening of the current session in New York.

My delegation therefore wishes to restrict its comments to Chapters I, II, III, IV, V and XI of the ILC Report.

Mdm. Chairperson,

On the work of Crimes against Humanity, Indonesia takes note of the entire set of draft articles on prevention and punishment of crimes against humanity, comprising a draft preamble, 15 draft articles and a draft annex, together with commentaries thereto.

We would like to highlight the utmost importance of the provisions contained within the draft articles, particularly Articles 6 and 7 on criminalization under national law and establishment of national jurisdiction respectively.

Equally crucial are Articles 13 and 14 of the Draft, which comprise of essential elements on the prevention and punishment of crimes against humanity, namely extraditions and mutual legal assistance.

In this regard, Indonesia emphasized, in its national statement on the universal jurisdiction two weeks ago, the prominence of cooperation among states to close the legal gap in order to end impunity, protect the rights of victims, and uphold justice. Such cooperation therefore should be translated into an agreement, particularly on extradition and mutual legal assistance.

Mdm. Chairperson,

With respect to criminalization under national law and establishment of national jurisdiction, Indonesia has also highlighted these matters. We maintain that through the Law No. 26 of 2000 on the Human Rights Court, we recognize the jurisdiction of Indonesia's human rights courts over gross violation of human rights committed by Indonesians irrespective of the location of the crime.

Under that Law and Law Number 39 Year 1999, 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 witnesses and victims of crimes against humanity and genocide, as well as prescribed non-prosecutorial approach to cases of crimes against humanity and genocide.

Furthermore, in this opportunity, Indonesia also wishes to reiterate its position that ending impunity and denying safe haven to individuals who commit crime against humanity is our responsibility. At the same time let us bear in mind that, in fact, there are still divergences of position concerning the scope and application of the principle of universal jurisdiction, which reflect, among others, in the scope and list of such crimes.

Mdm. Chairperson,

On the peremptory norms of general international law (*jus cogens*), Indonesia commends the draft conclusions on peremptory norms of general international law (jus cogens), adopted by the Commission at the first reading, as presented before us at this meeting.

We perceive that the definition of jus cogens specified in the draft conclusion is in line with the definition provided in Article 53 of the Vienna Convention on Law of Treaties. Nevertheless, with respect to other elements specified in the draft, especially in Conclusion 4 on criteria for the identification of a peremptory norm, and Conclusion 6 on acceptance and recognition, we keen to develop our views and prepared to contribute our comments to this work.

The peremptory norm of general international law itself, including its relation within the Indonesian legal system, has been deliberated by Indonesian jurists and courts for a long time.

The identification of *jus cogens* in Indonesian legal practice can be found in the Landslide case 2003, where the Indonesian Supreme Court appears to have applied international law by declaring that national judges could use rules of international law if they view it as *jus cogens*.

Nevertheless, once again, we would conduct further study on the draft conclusions on the peremptory norm of general international law accordingly.

Mdm. Chairperson,

On other decisions matters, particularly on the sea-level rise issue, Indonesia sees the merit of this important and crucial topic.

As for the provisional application of treaties, our preliminary view is that the guide could become a useful tool in addressing special circumstance between states as long as there is an agreement on that provisional application.

In our case, we remain require further consideration concerning the guide on the provisional application, especially having the latest ruling made by the Indonesian Constitutional Court on the new interpretation towards the Law No. 24 of 2000 on Treaties.

Through such ruling, the Court has expanded the classifications of treaties, which requires involvement of Indonesian parliament, and consequently further extend the process to apply certain types of Treaty.

I thank you.