

Statement by
Mr. Ali Garshasbi
Representative of the Islamic Republic of Iran
before
The Sixth Committee of the
71st Session of the United Nations General Assembly
on
Report of the International Law Commission
on the work of its sixty-eighth session
(agenda item 78)

Cluster II
(Chapters VII and VIII)

Crimes against humanity
Protection of the atmosphere

&

Cluster III
(Chapters X, XI and XII)

Protection of the environment in relation to armed conflicts
Immunity of State officials from foreign criminal jurisdiction
Provisional application of treaties

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On the topic of crimes against humanity, as we have previously stated, the very idea of drafting a new convention seems premature. Instances of crimes against humanity have been elaborated in numerous international instruments including the Statute of International Criminal Court. Thus, my delegation doubts whether the final outcome of the Commission in this regard could contribute considerably to the existing literature on the topic; this rationale is further bolstered by the fact that numerous nat

ILC's work on this topic with interest and will submit our further remarks in a timely manner

As regards the relation to armed conflict, my delegation would like to thank the Special Rapporteur, Ms. Marie G. Jacobsson, for her work on the topic in general, and

humanitarian law concerning the protection of environment. In this regard, we believe that the list of vital infrastructure excluded from military targets in article 56 of the 1977 first Protocol Additional to the Geneva Conventions is merely illustrative. The exclusion of oil platforms and other oil production and storage facilities, especially those built in the continental shelf, has proven to run counter to the purposes of the drafters of

international law, and as such enjoy wide acceptance by the international community and may therefore be included in the list.

To sum up our remarks on this topic we continue to follow the work of the Commission and look forward to the Special Rapporteur's further reports.

Now turning to the topic of "Provisional application of treaties", my delegation would like to express its appreciation to the Special Rapporteur, Mr. Juan Manuel Gomez Robledo for his fourth report on the topic and the addendum thereto. Thanks should also go to the Secretariat for the preparation of the addendum containing examples of recent European Union practice on provisional application of agreements with third States.

My delegation supports and shares the idea that provisional application of a treaty may accelerate and facilitate its implementation. We understand, however, that scarcity of practice and lack of adequate domestic legislation further hinders the work of the Special Rapporteur. This is especially remarkable in that Article 25 of the 1969 Vienna Convention on the Law of Treaties offers an example of an ILC draft proposal which underwent considerable change at the Vienna Conference and the final result leaves States free to disregard the possibilities currently offered by Article 25, if on constitutional grounds they cannot accept to be bound provisionally.

Also, since decision and consent of the State exercising its right to provisionally apply the treaty remains central to the concept, it is evidenced by the wording provided by Article 25 nothing precludes exercise of application of reservation to the treaty at the time of ratification, acceptance, approval or accession. In this context, while we share the view that the legal regime and modalities for termination and suspension for provisional application of a treaty need further clarification, my delegation expresses its doubt as to the point that all the elements of the Vienna Convention could be inferred for provisional application of treaties by way of analogy.

As a final remark, my delegation expresses its doubt whether State practice approves the full implementation of international responsibility regime for breach of an obligation arising under a treaty or part of a treaty that is provisionally applied regardless of the content of the provisions being applied. This is especially significant once one takes into account the *raison d'être* of the treaty to ensure a wider acceptance of the treaty in question by States vis-à-vis to whom the treaty has not yet entered into force. As an example thereof one may refer to article 18 of the Convention on Cluster Munitions which upon recourse by States, facilitates and further accelerates wider accession to the treaty by signatory

States Imposing a strict interpretation of rules

humanitaire, elles doivent être respectées en toutes circonstances et aucune dérogation à ces règles n'est admise. Mais cela ne veut pas dire pour autant qu'elles sont toutes impératives.