



PERMANENT MISSION OF ROMANIA
TO THE UNITED NATIONS



Check against delivery

**73rd Session of the General Assembly of the United Nations
Sixth Committee**

Agenda item 82

Report of the International Law Commission

Chapter VI – Protection of the atmosphere

Chapter VII – Provisional application of treaties

Chapter VIII – Peremptory norms of international law

**Speech delivered by Mrs. Alina Orosan
Director General for Legal Affairs
Ministry of Foreign Affairs**

New York, October 2018

R ROMANIA
for the United Nations Security Council
2020-2021

573-577 3rd Avenue, New York, NY 10016
Phone: (212) 682-3273, (212) 682-3274, Fax: (212) 682-9746
E-mail: newyork-onu@mae.ro <http://mpnewyork.mae.ro>

La ROUMANIE
pays candidat au Conseil de sécurité des Nations Unies
2020-2021

Chapter VI – Protection of the atmosphere

My delegation supports the Special Rapporteur's work on the topic of protection of the atmosphere. The atmosphere is a resource of common concern of humankind; the effects of pollution in the atmosphere are trans-border.

Guideline 10 on *Implementation* states the different forms national implementation of international obligations can take. As this is a general topic, applicable to all other areas of international law, we doubt its usefulness in the current Chapter. We consider that a more direct link with the specificity of international obligations on protection of atmosphere is necessary.

With a view to a progressive legal development in this area, Romania supports the use of compliance mechanisms in the field of environment protection, including as concerns the protection of the atmosphere.

The mechanism of compliance is very important to ensure States behave *in good faith*, in line with their international obligations. Romania has used such mechanisms in the past and has been both a monitoring State as well as a monitored State within compliance review procedures. Thus, Romania can attest on the usefulness of such mechanisms as factors of awareness raising at the level of local and central authorities, as well as at the level of the general society especially on the timely need to adopt measures in the implementation of international legal obligations, as well as on the adequacy of the means adopted in their implementation.

In Guideline 11 on *Compliance*, the language indicates the possibility for an alternative use of facilitative or enforcement procedures (“to achieve compliance, facilitative or enforcement procedures may be used”). The alternative is upheld as well by the commentaries to the guideline. This delegation considers that another viable option is that both procedures may be used subsequently: facilitative arrangements may be used first, and should the non-compliance persist, an enforcement procedure should be envisaged.

We have noted a general progress on this very specific and limited-in-scope topic and we are thankful for the contribution of the Special Rapporteur and of the Commission in refining the text of the guidelines and in ensuring adequate commentaries to them. We look forward to the swift conclusion of the work on this topic.

Chapter VII – Provisional application of treaties

The Romanian delegation would like to express its appreciation and gratitude for the impressive work done by the ILC and by the appointed Special Rapporteur, Juan Manuel Gomez Robledo, on this significant topic, which has enabled the Commission to adopt on first reading the entire

set of draft guidelines and the commentaries to them, as the draft Guide to Provisional Application of Treaties.

We fully align with the comments already provided on this topic in the statement made by the European Union. In our national capacity we would like to add a few additional comments and observations.

We welcome the revised version of the commentaries, which reflect the requests for clarification made on the occasion of our previous discussion. While we fully acknowledge the flexible nature of provisional application, the pursued objective of the guidelines is to provide further clarity to subject of international law so that practice can be adjusted accordingly.

We consider that substantial progress has been made in the complex task of distinguishing between provisional application and entry into force. The additional explanations included in the commentaries to guidelines 6 and 9 are useful in this regard.

The topic on which Romania considers that additional clarity is still required concerns the source of the obligation for States or international organizations not taking part in treaty negotiations.

Equally, the situation of States that do not take part in the process of the adoption of a decision by an international organization or intergovernmental conference or voting against it should be further clarified.

Having clarity on the source of the obligation, hence the moment as of when the *pacta sunt servanda* principle is relevant is also necessary in view of clarifying the circumstances on the formulation of reservations. It is with this pre-requisite that we welcome the addition of guideline 7. We note that the Commission is only at the initial stage of considering this question and we express our support for its further exploration.

With regard to the proposed model clauses, we consider them extremely relevant and useful and expect that they will be widely used in the future treaties. The list of model clauses proposed reflect at least RO's practice on the matter.

Chapter VIII – Peremptory norms of general international law (jus cogens)

Romania welcomes the third report by Mr. Dire Tladi on the topic of *Peremptory Norms of General International Law (Jus Cogens) focusing on the consequences of such norms* and the subsequent debates that took place within the framework of the Commission.

We note the effort of the Special Rapporteur to cover all possible consequences of peremptory norms of general international law (*jus cogens*), despite having to face a lack of state practice on the subject.

We would have liked, however, to have before us, for proper consideration, draft conclusions and relevant commentaries that express the view of the ILC on the subject matter, considering especially that some important work has already been invested in the topic. We do consider that such a progress would have ensured an adequate dialogue in between the ILC and the 6th Committee, in the logic of the work that defines the interplay in between the two fora and would have certainly streamlined the work on this significant subject.

While waiting for such an outcome of the ILC, my delegation would like to emphasize the following:

- the work on this topic (like on all other topics under ILC's consideration) must be based on state practice, rather than on doctrinal approaches. Only in this way the mission of the ILC can be attained, namely codification and progressive development of international law;
- the Special Rapporteur should also pay greater attention to existing relevant international law and ensure that, in the process of the consideration of the topic, it does not depart from the normative framework already in place;
- at the same time, consistency should be ensured with the other topics considered or still under consideration by the ILC in order to prevent fragmentation or conflicting statements, which would run counter to the object and purpose of the ILC's mandate.

The topic in itself maintains its importance as it assumes to shed more clarity on the occurrence of *ius cogens* norms and on their content. We look forward for the ILC's progress on the topic.

Thank you.