

**Statement by**  
**DELEGATION OF VIET NAM**  
**at the 73rd Session of the Sixth Committee of UNGA**  
**on Agenda Item 82: “Report of the International Law Commission”**  
**Cluster II (Chapters VI, VII and VIII)**

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Thank you Mr. Chairman,

1. We would first like to turn to the topic of **Protection of the atmosphere**.

On this topic, we note with appreciation the works and efforts of the Special Rapporteur, Mr. Shinya Murase that have resulted in the provisional adoption of draft guidelines on important issues such as the interrelationship between international law on the protection of the atmosphere and other fields of international law, namely international trade and investment law, the law of the sea and international human rights law.

Protection of the atmosphere is a pressing concern of States and the international community as a whole. Therefore, Viet Nam again welcomes the works of the Commission to tackle this contemporary issue.

With regard to his latest report, we would like to make several observations as follows:

First, we would like to suggest that the Commission and the Special Rapporteur consider incorporating the concept "the common concern of humankind" into the 4th Preambular Paragraph of the Draft Guidelines as mentioned in the Paris Agreement in 2015.

Second, we echo the view expressed by several delegations that it is no longer necessary to uphold the 2013 understanding as reflected in the 8th preambular paragraph of the Draft Guidelines. The understanding was intended to prevent a conflict between the draft Guidelines and the on-going negotiation of the Paris Agreement in 2013. However, as the Paris Agreement was adopted in 2015, it is high time for the Commission and the Special Rapporteur to revisit its stance on the matter.

Third, we would like to express our support for the Special Rapporteur's approach on the significant role of scientific evidence in adjudicating environmental disputes in order to safeguard a fair proceedings as well as interests of disputing parties. Indeed, we recognize that in protection of the atmosphere, the use of scientific evidence is indispensable. Thus, instead of passively reacting to evidence submitted by disputing parties, international tribunals and courts should actively seek assistance from scientists and experts when dealing with highly technical disputes, such as environmental disputes.

*Mr. Chairman,*

2. Turning next to the topic of **Provisional Application of Treaties**, this delegation congratulates the Special Rapporteur and the Commission on the completion of the full draft Guidelines for the first reading of the General Assembly.

At the outset, Viet Nam supports the early completion of the Guidelines to meaningfully assist States in developing consistent practices regarding their provisional application of treaties, despite the Guidelines' non-binding nature.

Furthermore, my delegation seeks further clarification on the following issues.

First, relating to the form of agreement reflected in draft Guideline 4(b), in the case where provisional application of a treaty is determined based on a resolution of an international organization which is adopted by the majority of State parties while some States have voiced their opposition to such provisional application, how then will the treaty be applied to such States? If the treaty is provisionally applied to the opposing States despite their opposition, is the national sovereignty of the States in question negatively affected?

Secondly, we notice an issue with regard to Guidelines 9 (c) which provides that the Guidelines would not prejudice Part V of the Vienna Convention 1969 on the Law of Treaties. In fact, Part V of the Vienna Convention only deals with treaties already in force while the Guidelines govern treaties which are provisionally applied. This leads to an uncharted problem with legal consequences for serious violations of provisionally applied treaties. In our view, the Special Rapporteur and the Commission should have a careful evaluation of such violation in order to ascertain the *mutatis mutandis* application of the Vienna Convention 1969.

*Mr. Chairman,*

3. Turning to the final topic of this cluster on **Peremptory norms of general international law (*jus cogens*)**. At the outset, Viet Nam reiterates its appreciation to the Special Rapporteur, Mr. Dire Tladi for his tireless contribution to this topic.

Peremptory norms play an important role in international law and is recognized under the 1969 Vienna Convention on the Law of Treaties as well as domestic legislations of many States. The Vietnamese Law on Treaties which has been adopted in 2016 also recognizes peremptory norms of international law, or *jus cogens*, as a principle to be adhered to in the course of negotiating and entering into international treaties. However, to date, it remains unclear on the identification of such norms.

We therefore commend the efforts of the Commission in addressing this issue and note that the Commission has attempted to tackle this topic on a number of occasions without much success. However, the fundamental nature of *jus cogens* in general international law merits further discussion at the Commission. Along this line, we take note of the third Report by the Special Rapporteur, Dr. Tladi, with new 13 Conclusions and encourage the Commission to continue the research into matters related to *jus cogens*.

With regard to Conclusion 16, we fully support the idea that a unilateral act that is in conflict with a *jus cogens* norm is invalid. However for the sake of legal precision, we would like to propose that such unilateral act would be null and void from the very beginning. In this regard, at the end of Conclusion 16, we suggest the inclusion of the term "*ab initio*".

With regard to Conclusion 17, we understand that in addition to resolutions, inter-governmental organizations may also produce binding decisions, guidelines or may take other binding actions. So, it would be helpful if the Special Rapporteur in his future work clarifies whether draft Conclusion 17 covers all binding acts by international organizations and how to ascertain the binding nature of an act by the international organizations.

With regard to Conclusion 23, we would like to caution the Commission on its approach. Conclusion 23 provides that "*The fact that an offence prohibited by a peremptory norm of general international law was committed by a person holding an official position shall not constitute a ground excluding criminal jurisdiction*". Such formulation with a clear intention to create an exception to immunity *ratione*

*personae* would likely violate the principle of sovereignty and may overlap with the relevant rules under discussion in the topic "Immunity of State Officials from Foreign Criminal Jurisdiction". We therefore doubt that this Conclusion may fall outside the scope of this project. In this regard, we encourage the Commission to work on a consistent approach on this matter based on a rigorous and thorough analysis of adequate and common state practice as well as judicial precedents. In order to prevent any duplication of work at the Commission, we strongly favor the retention of this matter to the topic "Immunity of State Officials from Foreign Criminal Jurisdiction".

Thank you, Mr. Chairman.