



Statement by
Mr. Naser Asiabi Pourimani, Representative of the Islamic Republic of Iran
before the
Sixth Committee of the
76th Session of the United Nations General Assembly
on Agenda item 83:

**" Report of the International Law Commission on the work of its seventy-
second session"**

Cluster I

Chaps: IV (protection of Atmosphere), V (provisional Application of treaties) and
X (other Decisions)

Madam Chairperson,

I would like to begin by thanking the Chairperson of the Commission, Mr. Mahmoud D. Hmoud, for his comprehensive report. I would also like to express my gratitude to all members of the Commission for their considerable efforts over the last year. We believe that the annual report of the Commission contained in document A/76/10 sheds further light on many aspects of the topics considered in the Commission.

My delegation would like to first of all touch upon topics under cluster I, namely the “protection of atmosphere”, “provisional application of treaties” and “other decisions”.

Madam Chairperson

With regard to the “*protection of Atmosphere*”, we would like to commend the Commission for the adoption of draft guidelines and its commentaries on the second reading. We also thank the Special Rapporteur, Mr. Shinya Murase, for his contribution to this process.



Over the past decades and in light of rapid environmental degradations in the whole planet, the essential importance of the atmosphere for sustaining life on Earth has become tangible more than ever.

With regard to the draft in question, we accept the formulation proposed by the Drafting Committee in first preambular paragraph which refers to the atmosphere as “natural resources.” This approach is consistent with the guidelines 5 and 6 in which sustainable and equitable use of atmosphere are discussed respectively. It is also in line with general principles of international law in particular the principle of sovereign equality of States. In this vein, we are also of the view that an equitable utilization cannot be realized without affording due consideration to the benefit of the international community as a whole, especially developing countries and the most vulnerable groups.

We concur again with the Commission for replacing “pressing concern of international community” with “common concern of humankind” in the fourth preambular paragraph. The concept of “common concern of humankind” is a well-known concept which has already been supported and reflected in a preambular paragraph of the 2015 Paris Agreement.

Regarding the draft guideline 7, we maintain that the phrase “intentional large-scale modification” is not clear enough. It shall be



determined that what activities is a large-scale modification and what is the impact of the distinction made by the referring to the element of intentionality in this guideline.

On guideline 8, we would like to admit the necessity of obligation to cooperate for the protection of the atmosphere; we also welcome the addition of the word “technical” in paragraph 2 of this guideline. In this connection, I would like to refer to the inhumane and illegal unilateral coercive measures imposed on the Islamic Republic of Iran as the main impediment to any cooperation in this area. With the unilateral coercive measures, among other impediments to transfer of advanced technologies, including technologies relating to renewable energies prohibited, *inter alia*, import of medicines and pesticides for agriculture, livestock and poultry, the industry has faced considerable barriers including problems in commerce and transferring of funds. The secondary nature of such unlawful punitive measures on the Islamic Republic of Iran doubles the negative effects resulting from the sanctions per se. Thus, where the cooperation is endorsed as an obligation and the negative impact will extend to the international community as a whole, the obligation shall be accompanied by a clause containing an obligation to refrain from imposing measures that render cooperation impossible.

Regarding draft guidelines 10 and 11, we are of the view that these guidelines shall be read together with draft guideline 8 on the obligation to cooperate. In most cases, implementation and compliance of the



obligation depend on the scientific and technical knowledge which are exclusively owned by developed countries. In the circumstances in which a considerable number of States lack the capability to comply with obligations under international law, incurring international responsibility would not have the necessary efficiency. Thus, we propose strengthening the frameworks for cooperation instead of more elaboration on States responsibility.

Madam Chairperson

On the topic of “provisional application of treaties”, we would like to commend the Commission for the adoption of the “Guide to provisional Application of Treaties” and commentaries thereto in its second reading. We also thank Special Rapporteur Mr. Juan Manuel Gomez Robledo for the contribution he made to this process.

At the very outset, my delegation appreciates the Commission for the studies which it undertook on the law of treaties during the last decades. These studies, including Vienna convention on the law of treaties, Vienna Convention on the law of treaties between States and international organizations or international organizations, reservation to treaties, the effect of armed conflict on treaties, unilateral acts of States, subsequent agreements and subsequent practices in relation to the interpretation of treaties, and now the provisional application of treaties have significantly contributed to the codification and progressive development of international law in this fundamental field.

On the topic in consideration, we would like to emphasize that article 25 of VCLT on provisional application of treaty merely offered



States the possibility of provisional application without the imposition of any obligation. As a result, the provisional application would not serve as a basis for restricting States' rights with regard to their future conduct in relation to the treaty that might be provisionally applied.

In this connection, we align with the view expressed by the Special Rapporteur in paragraph 114 of his Sixth report which recommends that no element relating to article 18 of VCLT be incorporated into the draft guideline, *inter alia*, we emphasize that since there is a substantial difference between article 18 regime and article 25 regime, there is no relation between these two articles of 1969 Vienna Convention.

With regard to guideline 4, we welcome the formulation adopted by the Commission and also the draft clause model proposed by the Special rapporteur in Annex II of his report. We are of the view that a resolution, decision, or other act adopted by an international organization or at an intergovernmental conference might have such effect, only if, the State concerned agreed upon the binding nature of that decision.

On guideline 6, we accept the wording adopted by the Commission. However, we are of the view that the provisional application of a treaty only produces limited legal effects during the specific period in which mutually agreed upon its application.

By this consideration, we maintain that the principle of consent prevailing in international law and particularly the law of treaties as well



as flexibility and non-binding nature of the proposed provisions as the core elements of the provisional application of treaties indicates the different characteristics of the topic. Thus, defining a responsibility regime, through analogy, in guideline 8, is inconsistent with the nature of the regime of the provisional application. This guideline would undermine willingness of Countries to apply treaties provisionally.

Madam Chairperson

With regard to topic “other decision”, concerning the inclusion of the topic “Subsidiary means for the determination of rules of international law” in the long-term program of work of the Commission, the Islamic Republic of Iran commended the studies of the Commission on the sources of international law, which embedded in the Article 38 of International Court of Justice Statute.

We believe that the topic would contribute to the progressive development of international law and is in line with the other studies of the Commission on the sources of international law. However, Commission shall take into account its constraints on the subsidiary means, particularly the one which is determined in Article 59 of the same Statute regarding the relative effect of the Decisions of the court.

The Commission also shall avoid any over-developing regarding both judicial decisions and teachings of the most highly qualified publicists. Hence, the study shall be limited to the identification and application of both prongs



We have yet, nonetheless, doubts whether various aspects of this topic including the status of doctrine in international law be sufficiently advanced in stage in terms of State practice to permit progressive development. With reference to part V (paragraphs 29- 36) of the syllabus proposed by Charles C.Jalloh as an annex to the report of the Commission, we are not also convinced that the second prong of the topic is concert and feasible enough for progressive development.

Thank you, Madam Chairperson.