

General Assembly
Seventy-sixth Session
Sixth Committee
25 October 2021
Agenda item 82:
Report of the International Law Commission on
the work of its seventy-second session

Cluster I

Protection of the Atmosphere (Chap IV)
Provisional Application of Treaties (Chap V)
Other decisions and conclusions of the Commission (Chap X)
Statement by Sweden on behalf of the Nordic countries

Mme./Mr. Chair,

I have the honour to speak on behalf of the five Nordic countries Denmark, Finland, Iceland, Norway and my own country Sweden.

Before I comment on the topics covered in Cluster I of the report, we would like to use this opportunity to also make some general remarks regarding **chapters I, II, III and X** of the Report.

First, we want to reiterate the Nordic countries' deep appreciation of the work of the International Law Commission and the Commission's contribution to the progressive development and codification of international law in accordance with its mandate. We welcome the Commission's Report on the work of its seventy-second session.

The Commission has had a challenging workload and achieved important results, although it had to carry out its work in hybrid format due to restrictions related to the covid-19 pandemic. The report accounts for the difficulties encountered during the session and we note that the Commission thinks that some lessons for adapting the working methods of the Commission could be drawn from the experience. We could not agree more.

This year the Commission adopted on second reading the Guidelines on the protection of the atmosphere with commentaries as well the Guide on the provisional application of treaties, including an annex of examples of provisions on provisional application of treaties. Substantial progress was made on other topics on the Commission's agenda as well. We salute these results, which are all the more remarkable given the challenges of working in hybrid format.

We note that this year the Commission was not in a position to have its traditional exchanges of information with stakeholders. We hope that during the next session these can be resumed in full scale.

The Nordic countries take note of all the requests for information contained in Chapter III of the Report. Examples of State practice are particularly pertinent for many of the topics currently under consideration and the Nordic countries will make every effort to provide the Commission with relevant information, where available, and encourage other States to do the same.

We note also that the Commission is concerned about the effect of the budgetary constraints placed on it and how that affects the quality of the work of the Commission. The Nordic countries agree that it is essential that all members of the Commission are able to attend the meetings of the Commission and that all Special Rapporteurs have the research assistance necessary for the preparation of the reports. The attendance during the sessions of the Secretariat teams needed for the Commission to fulfil its mandate is equally important. We note that that the Commission suggests to establish a trust fund to support the Special Rapporteurs especially from developing regions. While we stress that adequate resources for the Commission to fulfil its mandate should be provided from the regular budget of the UN, we are open to consider the establishment of a Trust Fund to facilitate additional support for the work of the Commission and its members.

We welcome the inclusion in the long-term programme of work of the Commission the topic “Subsidiary means for the determination of the rules of international law”. We agree with the Commission that the work on the topic would constitute a useful contribution to the progressive development of international law and its codification. It would also complete the Commission’s work on sources of international law. We support its speedy inclusion in the active work programme of the Commission.

Mme./Mr. Chair,

Turning now to the topic of **Protection of the Atmosphere**, The Nordic countries would like to thank the International Law Commission for its efforts that led to the adoption of an entire set of draft guidelines and commentaries thereto. We would especially like to commend the Special Rapporteur, Mr. Shinya Murase for the skill with which the Special Rapporteur has conducted his work on this weighty and complex subject, acknowledging the difficulty of the task given the restricted mandate of the topic at hand.

With regard to the draft guidelines, adopted by the Commission on second reading, the Nordic countries are pleased to note that the Commission, upon consideration of the Special Rapporteur included the expression ‘common concern of humankind’ in the third preambular paragraph in lieu of ‘pressing concern of the international community as a whole’. As stated by the Nordic countries in our comments and observations in 2018, the more established term ‘common concern of humankind’ reflects better the subject-matter of the guidelines, taking into account the wording of the Paris Agreement and other international instruments.

We note however, the choice to employ the expression ‘prudence and caution’ in draft guideline 7 on intentional large-scale modification of the atmosphere. While firmly

supporting the objective of the draft guideline, the Nordic countries believe that the term ‘precautionary approach’, as expressed in the Commission’s Draft Articles on the Law of Transboundary Aquifers draft Article 12, would have been a more relevant point of reference.

The Nordic countries welcome the Commission’s recommendations to the General Assembly to, inter alia, take note in a resolution of the draft preamble and guidelines on the Protection of the Atmosphere, annex the draft guidelines to the resolution, and ensure their widest possible dissemination. We wish to reaffirm our appreciation for the work carried out by the Commission and the Special Rapporteur on the Protection of the Atmosphere. We are convinced that the guidelines will be a useful addition to international environmental law.

Mme./Mr. Chair,

Regarding the topic of **Provisional Application of Treaties**, the Nordic countries are very pleased with progress made at this year’s session with the adoption of the Guide to Provisional Application of Treaties, including the draft guidelines, the commentaries thereto and a draft annex containing examples of provisions on provisional application. The Nordic countries have continuously supported the efforts of the Special Rapporteur and the Commission on this subject. We believe that the work of the Commission on this topic is of significant practical importance.

The Nordic countries commend the guide and its commentaries as well as the efforts of the International Law Commission in compiling the practice of States and international organizations in the provisional application of treaties. The material altogether offer great and valuable practical assistance when formulating final provisions of treaties.

Turning to specific comments, we welcome the Commission’s work on the legal basis of provisional application, including the reference to Article 24 of the Vienna Convention on the Law of Treaties in the commentary to draft guidelines 3 and 5. We are of the view that the issue of provisional application arises from the time of the adoption of the text of the treaty. This provides the legal basis for the provisional application.

The Nordic Countries commend the final formulation of guideline 4 as it confirms that, in addition to a separate treaty; provisional application may also be agreed through “any other means or arrangements”, which broadens the range of possibilities for reaching agreement on provisional application. According to the commentary, the draft guideline retains a certain degree of flexibility to allow for other modes of acceptance on the condition that such acceptance is express. The Nordic Countries also support the view taken by the International Law Commission that the term “declaration” is not meant to refer to the legal regime concerning unilateral declarations of States, which does not deal with the provisional application of treaties.

The Nordic countries also commend the Commission on its work on the use of reservations vis-à-vis provisional application in draft guideline 7. While, recognising the

lack of significant practice, the guidelines and the commentary may nevertheless provide guidance.

On behalf of The Nordic countries I would like to express our congratulations to the Special Rapporteur Gómez Robledo for the results achieved along with our warmest thank you for his efforts on this subject, which is of great practical significance.

Thank you.