



**INDIA**  
**भारत**

**STATEMENT BY**

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**ON**

**AGENDA ITEM 82**

**“CHAPTER I,II,III,IV: PROTECTION OF THE ATMOSPHERE,  
V: PROVISIONAL APPLICATION OF TREATIES”**

**AT THE**

**SIXTH COMMITTEE OF THE 76th SESSION OF THE**

**UNITED NATIONS GENERAL ASSEMBLY**

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At the outset, India joins others in thanking Chairman of the 72nd Session of International Law Commission, for his Report and for guiding the work of the Commission at this session. We also thank members of the Commission for their contribution to the work of the Commission at this Session

We thank Special Rapporteur Mr. Shinya Murase for his valuable contributions in submitting Report and on successful completion of the second reading of the topic protection of the atmosphere and the adoption of the preamble and 12 draft guidelines on the subject.

### **Madam Chair**

We welcome the draft preamble and guidelines, together with the commentaries thereto as an international document consolidating the main principles and concerns regarding the protection of the atmosphere at the global level.

The Draft Guidelines are based on the notion that the atmosphere is the Earth's largest single natural resource. As a natural resource, the atmosphere was long considered to be non-exhaustible and non-exclusive, since it was assumed that everyone could benefit from it without depriving others. This view no longer holds good and has been realised that the atmosphere is a limited resource with limited assimilation capacity and a medium through which transport and dispersion of polluting and degrading substances occur .

### **Madam Chair,**

ILC has sought, through the progressive development of international law and its codification, to provide guidelines that may

assist the international community to address critical questions relating to trans-boundary and global protection of the atmosphere.

We take a special note of Paragraph 1 of draft guideline 8 concerning the obligation of States to cooperate internationally. We believe that International cooperation is an effective means of ensuring harmony between separate instruments and bodies concerned with protection of the atmosphere, Paragraph 2, of draft guideline 8 which is formulated as a “should” requirement, calls for cooperation in further enhancing scientific knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation which could include capacity-building and technology transfer and exchange of information .

We also take note of draft guideline 9 which suggests that rules relevant to the protection of atmosphere in other fields of International law like Law of the Sea, Human Rights, and Trade should be identified, interpreted and applied in order to prepare a set of obligations, so as to harmonize and integrate them to avoid conflict.

We are of the view that each area of international law has its own subject matter, scope and the legal regime through treaties to regulate the activities in that field and the issues related thereto. Therefore, in-depth study is required to find the relevant and common factors between the protection of the atmosphere and such other fields of international law. In this process, established treaty regimes in other fields of international law including their core objective would have to be taken care and respected before linking to any other field.

Madam Chair,

Finally , as a general comment, there is no denying that the atmosphere we live in is a common resource which all States have a duty to protect for present and future generations, more significantly for the developing, less developed and especially the island states that face the risk due to continuing sea rise.

Madam Chair,

Now I turn to the topic “Provisional application of treaties”, we thank Special Rapporteur Mr. Juan Manuel Gómez Robledo, for his efforts which has resulted in the sixth report (A/CN.4/738), and also comments and observations received from Governments and international organizations (A/CN.4/737), on the draft Guide and on several draft model clauses, proposed by the Special Rapporteur to the Commission at its seventy first session (2019). The Commission has adopted, on second reading, the entire Guide to Provisional Application of Treaties, comprising 12 draft guidelines and a draft annex containing examples of provisions on provisional application of treaties, together with commentaries thereto.

Article 25 of the 1969 Vienna Convention on the Law of Treaties forms the basic rule for provisional application of treaties The purpose of provisional application is to give immediate effect to all or some of the substantive provisions of a treaty without waiting for the completion and effects of the formal requirements for entry into force contained therein. It is a mechanism that allows States to give legal effect to a treaty by applying its provisions to certain acts, events and situations before it has entered into force. Treaties may also be applied provisionally in order to expedite their implementation prior to

completion of the constitutional procedures for their ratification and entry into force.

We express our appreciation for the Commission's work on the complex matter of provisional application of treaties and the draft guidelines, which will form a comprehensive manual for the practice of States and international organizations. In a dualist legal system like in India, where treaties must be transposed or incorporated into national law to become effective, it is a typical requirement of domestic law of certain States that the competent organ may only agree to provisional application of a treaty if national law is already in conformity with the treaty or is brought into conformity with it.

We maintain the view that treaties should be applied after their entry into force, as a rule, and that provisional application before entry into force should be regarded as an exception that would be applied at the discretion of States. In this regard, the draft guidelines and the draft model clauses should only aim to guide those States and international organizations that wish to apply certain bilateral or multilateral treaties provisionally, and should not prejudice the flexible and voluntary nature of this legal concept.

Based on this understanding, it would be more suitable for the concept of provisional application to be included in treaties as a voluntary option which States can choose to apply, and not as a legal obligation which States would have to opt out of or make reservations to. We are of the view that State's political social and legal system has greater role to play in the provisional application of a treaty, including in the manner of expressing consent to a treaty.

**I thank you Madam Chair.**