



PERMANENT MISSION OF ROMANIA  
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*Agenda item 82*

**Report of the International Law Commission  
(72<sup>nd</sup> Session, A/76/10)**

*Chapter IV – Protection of the atmosphere*

*Chapter V – Provisional application of treaties*

*Chapter X – Other decisions and conclusions of the Commission*

**Speech delivered by Mrs. Alina Orosan  
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## ***General remarks***

*At the outset I would like to extend this delegation's congratulations to you for assuming the chairmanship over our Committee and ensure you of our continued cooperation and support.*

At the same time, I would like to express our appreciation to the Chair of the International Law Commission for the comprehensive presentation of the report on this year's ILC session and to all members of the ILC for their continued efforts in ensuring a good progress of work on topics on the agenda of the Commission, relevant for the progressive development and codification of international law. The progress achieved is even more commendable given the difficult sanitary times that required significant adjustments in methodology in order to allow the Commission to hold its regular sessions and ensure that its mandate is discharged in conformity with its terms of reference and the programme of work.

The 6<sup>th</sup> Committee has before it a good report that reflects the conclusion of the work on two rather difficult topics that have been on the ILC's agenda for some time - *Protection of the atmosphere* and the *Provisional application of treaties* – and a good progress of work on other very important topics of high relevance to the current challenges faced by the international community (I would highlight specifically the topic *Immunity of state officials and Sea-Level Rise*).

With two topics being removed from the agenda of the ILC, we would be interested to learn on the other topics that ILC reflects to address further, as part of its current programme of work. My delegation has previously manifested interest in ILC looking further into the legal regime relevant to the *prevention and repression of piracy armed robbery at sea*, and deepening the study in connection with the principle of *universal criminal jurisdiction* in order to guide States in their discussions on the subject matter. We have also welcomed the intended consideration by the ILC of the *settlement of international disputes to which international organisations are parties* and we encourage ILC to include this topic in its current work programme.

## ***Chapter X – Other decisions and conclusions of the Commission***

We note further the decision of the ILC to include in its long-term programme of work the topic *Subsidiary means for the determination of rules of international law*, seen as fitting into the previous work done by the ILC in relation to the sources of international law. Although we see some merit in such an analysis by the ILC, we do not think at this point that the study on subsidiary means for the determination of rules of international law be prioritized over other topics that are on the long-term programme of work of the ILC.

*Chairperson,*

Turning to the order of business, with regard to the **Chapters IV and V** of the report, my delegation would like to submit the following views:

### ***Chapter IV – Protection of the atmosphere***

Romania expresses its deep appreciation for the outstanding contribution and continuous work of the Special Rapporteur, Mr. Shinya Murase.

The Draft Principles reflect and systematize a growing set of norms, which can be used to address the profound impacts of atmospheric pollution and atmospheric degradation, without prejudice to polluter-pays principle, the precautionary principle and the common but differentiated responsibilities principle, without affecting the status of airspace under international law, nor questions related to outer space.

We underline the progressive character of the principles. The seventh preambular paragraph emphasizes the interests of future generations, including with a view to human rights protection, as well as intergenerational equity. In taking measures to protect the atmosphere today, it is important to take fully into account the long-term conservation of the quality of the atmosphere, as a valuable universal resource of the humankind.

We bear in mind that the protection of the atmosphere is closely linked to numerous activities and to the oceans and the law of the sea owing to the close physical interaction between the atmosphere and the ocean. As such, the draft guidelines concern both the transboundary and global contexts. In the context of transboundary atmospheric pollution, the obligation of States to prevent significant adverse effects is strongly established as customary international law (confirmed in the Commission's articles on prevention of transboundary harm from hazardous activities and by the jurisprudence of international courts and tribunals). However, the existence of such obligation for global atmospheric degradation remains undecided.

In addition, we note that significant adverse effects on the atmosphere are caused, in large part, by the activities of individuals and private industries. In this respect, due diligence requires States to "ensure" that such activities within their jurisdiction or control do not cause significant adverse effects, although they might not be directly attributable. We are pleased with the way in which this responsibility is evidenced and reflected in the draft guidelines and the specific commentaries.

We see as important that the guidelines underscore as a separate obligation, the obligation of States to cooperate, as appropriate, to protect the atmosphere from pollution and degradation. The duty of States to cooperate comes as integral part of the general obligation of States to protect the atmosphere, as a resource that in itself cannot be separated by boundaries.

Furthermore, the guidelines seek to avoid fragmentation between the relevant rules regarding protection of the atmosphere and other fitting instruments (trade law, human rights law, law of the same to name a few), and looks at these aspects in an integrated manner.

All in all, Romania expresses its support for the work on this topic and is of the opinion that these principles will greatly contribute to improving the international action aimed at protecting the atmosphere.

### ***Chapter V – Provisional application of treaties***

The Romanian delegation would like to express its appreciation for the outstanding work of the Special Rapporteur, Mr. Juan Manuel Gomez Robledo, reflected in the adoption, by the International Law Commission, on second reading, of the *Guide to Provisional Application of Treaties, the annex and the commentaries to it*.

We fully align with the comments already provided on this topic in the statement made by the European Union. We would also like to make a few additional remarks, in our national capacity.

Romania welcomes the adoption of the Guide, which represents a very useful compendium on this subject and a practical tool for States and international organizations in their treaty-making practice.

The separation of paragraph (b) of *guideline 4* into a chapeau and two subparagraphs facilitates a clearer distinction between two different scenarios of agreeing the provisional application of a treaty or a part of a treaty. The explanation concerning the broader interpretation of the term “*intergovernmental conference*”, in the commentaries, is equally useful.

We support the decision to eliminate the phrase “*as if the treaty were in force*” from *guideline 6*, taking into account the diverging views on this issue and the argument that such a phrase might implicitly encourage the recourse to provisional application to the detriment of completing the national legal procedures necessary for the entry into force of a treaty.

As regards *guideline 9*, Romania welcomes its amendment, in order to take into account other grounds for the termination of provisional application, besides the intention not to become a party to the treaty.

While we acknowledge the efforts of the Special Rapporteur to provide model clauses in relation to provisional application of treaties, an idea which we have previously supported, we understand the rationale behind limiting the content of the annex, for future reference, to examples of provisions in existing agreements and other instruments and we are not oppose to such a course of action.

To conclude, I reiterate the appreciation of my delegation for the completion of the work on this topic which is of high practical value to every day work of the legal advisers in the Ministries of Foreign Affairs all over the world. In this vein, we support the recommendation addressed to the Secretary General to prepare a volume compiling the practice of States and of international organisations in the provisional application of treaties and other relevant materials to this topic.

Thank you.