



MALAYSIA

Permanent Mission to the United Nations, New York

[Please check against delivery]

**STATEMENT BY
MS. SARAH RUHAMA
SECOND SECRETARY
PERMANENT MISSION OF MALAYSIA TO THE UNITED NATIONS**

**ON AGENDA ITEM 82:
REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SEVENTY-SECOND SESSION**

**CLUSTER I - CHAPTERS I, II, III, IV (PROTECTION OF THE ATMOSPHERE),
AND V (PROVISIONAL APPLICATION OF TREATIES)**

**AT THE SIXTH COMMITTEE OF
THE 76TH SESSION OF THE GENERAL ASSEMBLY**

NEW YORK, 27 OCTOBER 2021

Madam Chair,

At the outset, allow me to thank Mr. Mahmoud D. Hmoud, Chair of the International Law Commission (ILC) for his briefing, and congratulate him as well as other members of the Commission for the exceptional work at the seventy-second session. My delegation also notes with appreciation the Report of the Commission of the recent session (A/76/10).

CHAPTERS I, II, III & IV: PROTECTION OF THE ATMOSPHERE

2. We thank the Special Rapporteur, Mr. Shinya Murase, for his determination and contribution on the topic “Protection of the Atmosphere”, which has resulted in a set of draft guidelines that will serve as a framework for the harmonisation of national laws and regulations with international rules, standards and recommended practices and procedures relating to the protection of the atmosphere. Malaysia notes that the draft guidelines will not seek to impose legal rules and legal principles on current treaty regimes.

3. Malaysia also appreciates the detailed and precise work that was undertaken by Mr. Murase in preparing the Sixth Report on the Protection of the Atmosphere dated 11 February 2020, which had largely taken into account the comments and observations by States and international organisations. Malaysia acknowledges the challenges, complexity and technicality of matters relating to the protection of atmosphere and the resulting contemporary practice on the same, particularly the different levels of development among Member States. In this regard, Malaysia hopes that the draft guidelines will take into consideration the proposals that were made by the Special Rapporteur in his Sixth Report.

4. Noting that the Sixth Committee has recommended for a resolution to be drafted in the current General Assembly session for purposes of taking note of the draft guidelines that will be annexed to the resolution, Malaysia has undertaken the necessary domestic consultation to review the revised version of the draft guidelines.

5. In general, Malaysia is supportive of the draft guidelines and the commentary that have been prepared. Overall, Malaysia views that the draft guidelines should work towards providing clear guiding principles and approaches for States to convene appropriate steps to protect the atmosphere. Nevertheless, Malaysia also views that an in-depth analysis in relation to the draft guidelines and its implementation could be explored further to ensure that it is workable for all Member States.

6. For Malaysia, there are still certain crucial observations that should be brought into perspective, particularly from the context of understanding the draft guidelines by the different Member States. In this regard, Malaysia wishes to highlight specifically on the fourth preambular paragraph of the draft guidelines, and draft guideline 11 on the issue of compliance.

Preambular Paragraph 4

7. Malaysia appreciates that the fourth preambular paragraph of the draft guidelines pays heed to the special situation and needs for developing countries. In utilising the atmosphere, Malaysia strongly believes that the participation of developing countries on equitable basis should not be marginalised in any way for lack of a proper economic standing and/or technical assistance. Nevertheless, Malaysia views that the limitations faced by developing countries should also be included in this paragraph, so as to reflect

the scarcity of resources, among others, in addressing the issue on protection of atmosphere.

Draft Guideline 11

8. Secondly, Malaysia observes that compliance under draft guideline 11 refers to the compliance of the obligations under the relevant international law, as well as the forms of enforcement measures. Specifically on termination of rights and privileges under the relevant agreements as part of the enforcement procedures envisaged under this draft guideline, Malaysia is of the view that the said termination of rights and privileges will be subject to the respective provisions of the relevant agreement.

9. As a conclusion, Malaysia is still positively considering the draft guidelines as a whole. Nevertheless, we would appreciate if the concerns raised herein can be deliberated further, considering the technical nature of this subject matter.

Madam Chair,

CHAPTER V: PROVISIONAL APPLICATION OF TREATIES

10. Turning to the topic of “Provisional application of treaties”, Malaysia commends the effort of the Special Rapporteur for the submission of the Sixth Report on the subject, and the Commission upon the adoption, 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.

11. Malaysia further notes that in accordance with article 23 of its statute, the Commission recommended to the General Assembly to take note of the Guide and to encourage its widest possible dissemination; to commend the Guide, and the commentaries thereto, to the attention of States and international organisations; and to request the Secretary-General to prepare a volume of the United Nations Legislative Series compiling the practice of States and international organisations in the provisional application of treaties, as furnished by the latter over the years, together with other materials relevant to the topic.

12. It is noted that position and comments expressed by Malaysia and other States have been addressed by the Special Rapporteur and the Commission including the comments which Malaysia provided during the seventy-third session of the General Assembly in 2018. Malaysia recognises the importance of the Guide as a non-binding instrument in clarifying existing rules of international law in the light of contemporary practice regarding provisional application of treaties.

13. Nevertheless, as provided in the General commentary to the Guide, Malaysia wishes to underscore the voluntary basis of the provisional application of treaties in which States and international organisations shall have the freedom and option to choose either to resort to such mechanism or not. In this regard, Malaysia reiterates its view that there should be a manifestation of an unequivocal consent and explicit commitment made by States and international organisations to apply the treaty provisionally and thereby agree to be bound by such provisional application.

14. Additionally, the provisional application of treaties may also be subject to limitations deriving from the internal laws of States and rules of international organisations. Thus, Malaysia reiterates its view that a State and international organisation must ensure that the manifestation of its consent to apply a treaty provisionally is compatible with its internal laws or rules.

15. In this regard, as submitted previously, Malaysia's domestic law does not provide for any express provision that prohibits or allows for the provisional application of treaties. Nevertheless, in preparation of ratifying or acceding to any treaty, Malaysia as a dualist State will ensure that its domestic laws are in place to be in line with the requirements under the international law. This is to ensure that Malaysia will be able to fulfil its obligations made under the treaty and devoid from any breach of international legal principles. Thus, Malaysia has been very conscientious in ensuring obligations in the treaty are carried out accordingly once Malaysia ratifies a treaty, by ensuring domestic legal framework to be in place before the treaty is binding upon Malaysia.

16. Considering the above, Malaysia unequivocally agrees with the General commentary of the Guide indicating that the Guide does not create any presumption in favour of the provisional application of treaties and is neither a substitute for securing

entry into force of treaties which remains the natural vocation of treaties, nor is it a means of bypassing domestic procedures.

17. Malaysia once again expresses its appreciation on the work of the Commission and believes that the Guide will become a useful tool in assisting States and international organisations concerning the law and practice on the provisional application of treaties.

18. In addition, the recommendation for the Secretary-General to prepare a volume of the United Nations Legislative Series compiling the practice of States and international organisations in the provisional application of treaties, together with other materials relevant to the topic would provide States and international organisations with source of references on the practice regarding the subject matter.

Thank you.