

STATEMENT BY  
DR. KAJAL BHAT  
COUNSELLOR & LEGAL ADVISER  
PERMANENT MISSION OF INDIA TO THE UN

ON

AGENDA ITEM 82

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

AT THE

SIXTH COMMITTEE OF THE 71<sup>ST</sup> SESSION OF THE  
UNITED NATIONS GENERAL ASSEMBLY

NEW YORK

10 OCTOBER 2016

At the outset, India joins others in thanking Chairman of the 72nd Session of International Law Commission, for his Report and for Madam Chair, for 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. Shinji Murase for his valuable contributions in submitting Report and on successful completion of the second reading of the topic of protection of the atmosphere and the adoption of the preamble and two 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 norms 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-rivalrous, since it was assumed that everyone could benefit from it without depriving others. This view no longer holds good and has been replaced with the concept of a common-pool resource. With

assist the international community to address critical questions relating to transboundary and global protection of the atmosphere.

We take a special note of paragraph 5 of draft guideline 1 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 1 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 would include climate change and technology transfer and exchange of information.

We also take note of draft guideline 2 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 objectives would have to be taken care and respected before linking to another field.

" adam Chair,

5inall# , as a general !omment, there is no den#ing that the atmosphere we li\$e in is a !ommon resour!e whi!h all States ha\$e a dut# to prote!t for present and future generations, more signifi!ant!# for the de\$eloping, less de\$eloped and espe!iall# the island states that fa!e the risk due to !ontinuing sea rise.

" adam Chair,

6ow I turn to the topi! 0 .ro\$isional appli!ation of treaties1, we thank Spe!ial Rapporteur " r. 7uan " anuel (8me4 Ro Iedo, for his efforts whi!h has resulted in the si,th report 9A:C6.;:7</=, and also !omments and o ser\$ations re!ei\$ed from (o\$ernments and international organi4ations 9A:C6.;:7<7=, on the draft (uide and on se\$eral draft model !lauses, proposed # the Spe!ial Rapporteur to the Commission at its se\$ent# first session 92>%2=. &he Commission has adopted, on se!ond reading, the entire (uide to .ro\$isional Appli!ation of &reaties, !omprising %2 draft guidelines and a draft anne, !ontaining e,amples of pro\$isions on pro\$isional appli!ation of treaties, together with !ommentaries thereto.

Arti!le 2? of the %2@2 Aienna Con\$ention on the Law of &reaties forms the asi! rule for pro\$isional appli!ation of treaties &he purpose of pro\$isional appli!ation is to gi\$e immediate effe!t to all or some of the su stanti\$e pro\$isions of a treat# without waiting for the !ompletion and effe!ts of the formal re-uirements for entr# into fore !ontained therein. It is a me!hanism that allows States to gi\$e legal effe!t to a treat# # appl#ing its pro\$isions to !ertain a!ts, e\$ents and situations efore it has entered into fore. &reaties ma# also e applied pro\$isionall# in order to e,pedite 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