



**PEOPLE'S REPUBLIC OF CHINA**  
**MISSION TO THE UNITED NATIONS**

350 EAST 35TH STREET, NEW YORK, NY 10016  
<http://www.china-un.org>

*PLEASE CHECK AGAINST DELIVERY*

*(translation)*

**Statement by Mr. XU Hong**

*Director General of the Department of Treaty and Law,  
Ministry of Foreign Affairs, People's Republic of China*

**At the 70<sup>th</sup> Session of the UN General Assembly**

*On Agenda Item 83*

**Report of the ILC on the work of its sixty-seventh session  
(Part I)**

*New York, 2 November 2015*

Mr. Chairman,

I am pleased to meet with colleagues in New York at a time when the UN is celebrating its 70th anniversary. As this is my first time to take the floor in the 6th Committee, I wish to congratulate you on your election, and I believe you will guide this session to a successful conclusion. I would also like to thank the Chairman of the ILC for his introduction to the work of the Commission at its 67th session. It serves as a very good basis for our discussions.

The Commission made important headways at its 67th session. It initiated the discussion on the topic of "Crime against humanity " and adopted ad ref four draft articles and related commentaries. It also adopted the final report on the topic of "Most-Favoured-Nation Clause" and concluded its consideration of this topic. Discussions on the topics of " Protection of the atmosphere ", "Identification of customary international law", "Subsequent agreements and subsequent practice in relation to the interpretation of treaties", "Protection of the environment in relation to armed conflict ", "Immunity of state officials from foreign criminal jurisdiction " and "Provisional application of treaties" have made headways with the adoption of relevant new draft articles. The Chinese delegation finds the overall work of the Commission satisfactory and will continue to supports the Commission in its work.

Mr. Chairman,

Let me first present my delegation's view on the topic of "protection of the atmosphere ". My delegation thanks the Commission for its in-depth discussions on this topic and the Special Rapporteur for his informative 2nd report. We appreciate the informal exchanges with scientists organized by the Commission specifically for the discussion of this topic, which has shown the rigorous approach adopted by the Commission in dealing with highly scientific topics like the protection of the atmosphere. Regarding the draft guidelines adopted by the Commission, I wish to state the following:

1. The purpose and scope of this project should be further clarified. The Commission has incorporated both in the preamble and guideline 2 the relevant understanding reached in 2013 on this topic, for example, the draft guidelines will not interfere with relevant political negotiations, including those on climate change, ozone depletion and long-range transboundary air pollution, and they will not seek to "fill" gaps in treaty regimes, nor will they deal with relevant basic principles of international environmental law. This will help ease the concerns voiced by quite a number of delegations in this committee about the relationship between this project and the relevant existing political and legal regimes. At the same time, however, we have noticed that the commentary of guideline 1 points out that this topic calls attention to such questions as transboundary air pollution, ozone depletion and climate change, and it takes the concept of "long-range air pollution" directly from the relevant regional conventions. This seems to contradict the afore-mentioned language in the preamble and guideline 2, which makes it difficult to understand the scope and purposes of the guidelines.

2. Some crucial terms need to be defined more clearly. Given the ambiguity and the uncertain legal consequences of the concept of "common concern of humankind", the Commission referred to the protection of the atmosphere as "a pressing concern of the international community as a whole" and placed it in the preamble. We appreciate this approach. But China believes that the meaning of some terms and the relationship among different terms still need further clarification. For example, the major difference between atmospheric pollution and atmospheric degradation seems to stem from the "deleterious effect" and the "significant deleterious effect" they produce. The distinction between the two is still not very clear. As another example, the "atmospheric degradation" referred to in the commentary of the draft guidelines means "worldwide atmospheric problems", we may therefore consider inserting the word "global" in front of the phrase "atmospheric conditions" in the definition of "atmospheric degradation" in Guideline 1 (c), so as to make clear that the "atmospheric

degradation" in the draft specifically means the alteration of atmospheric conditions that produces deleterious effect on the world.

3. We suggest that distinction be made among different types of atmospheric pollution and corresponding rules. Some types of atmospheric pollution might cause deleterious effect only to specific countries or regions, while others might cause deleterious effect on the international community as a whole, rather than certain countries. As such, the Commission should treat them differently in working out relevant provisions, and in particular, give consideration to the priorities of developing countries and their capacity building in addressing atmospheric pollution. A "one-size-fits-all" approach cannot meet the need of the world today.

Mr. Chairman,

The Chinese delegation has noticed that the Commission has included in its program of work the topic of "*Jus cogens*". While specific comments obviously need to wait till the Commission starts the discussion of this topic, my delegation wishes to put forward two preliminary viewpoints.

First, we suggest that the Commission collect and study state practices in relation to *jus cogens*. My delegation recalls that the main reason that in 1993 the Commission did not adopt the proposal of including *jus cogens* in its program of work was due to lack of relevant state practice. As there has not been any fundamental change in the situation since then, it remains extremely difficult to try to explain the nature and identification of *jus cogens*. An in-depth study on *jus cogens* won't be possible unless there is sufficient information on state practice.

Second, we should adopt a cautious approach in referencing the limited practice of international agencies. Although the 1969 Vienna Convention on the Law of Treaties and the Draft Articles on the Responsibilities of States for Internationally Wrongful Acts by the ILC did mention the concept of *jus cogens*, they did not aim to elaborate on the nature of *jus cogens*, nor can they serve as guidance for identification. The International Court of Justice

was also very cautious in its few decisions that referred to *jus cogens*. Based on the merit of each case, it went no further than explaining the relationship among the rules of *jus cogens*, the jurisdiction of the court, and immunity of state and state officials. It did not touch on the nature and the identification of *jus cogens*.

In conclusion, Mr. Chairman, I wish to put forward some proposals on the choice of new topics by the Commission. In choosing any new topic, the Commission should not only bear in mind the topics already on its agenda to avoid duplication of efforts, but also carefully examine the practice of all countries, focus on the shared needs of the international community, heed the views expressed by member states in the 6th committee concerning the work of the ILC and address, on a priority basis, matters on which the international community needs the guidance of international law so as to continue to contribute to the codification and development of international law.

Thank you, Mr. Chairman.