



**INDIA**  
**भारत**

**STATEMENT  
BY  
MRS. RITI PATHAK,  
HONB'LE MEMBER OF PARLIAMENT, INDIA  
ON**

**AGENDA ITEM 83.  
"REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS SIXTY-SEVENTH SESSION- Cluster-1"**

**AT THE  
SIXTH COMMITTEE OF THE 70<sup>TH</sup> SESSION OF THE  
UNITED NATIONS GENERAL ASSEMBLY**

**NEW YORK**

**3 November 2015**

**Mr. Chairman,**

At the outset, India joins others in thanking Mr. Narinder Singh, Chairman of the sixty-seventh session of the International Law Commission, for the comprehensive introduction of the report and for guiding the work of the Commission at this session. We also thank all the Members of the Commission for their valuable contribution to the work of the Commission.

**Mr. Chairman,**

2. Under Cluster-1 topics, we would like to focus on “The Most-Favoured-Nation clause”; and “Protection of the atmosphere”.

**Mr. Chairman,**

3. In relation to the topic “The Most-Favoured-Nation Clause”, we note with appreciation that under the Chairmanship of Mr. Donald M. McRae, the Study Group, submitted its final report and the summary conclusions, which were adopted by the Commission.

4. We thank Prof. McRae for his valuable contribution to the subject. We take this opportunity to thank Dr. A. Rohan Perera, who co-chaired the Study Group from 2009 to 2011, for his valuable contribution and also thank Mr. Mathias Forteau for chairing the Study Group in 2013 and 2014.

5. The report of the Study Group summarized the developments subsequent to the adoption of 1978 draft Articles by the Commission, especially the developments in the interpretation and application of the MFN clauses in the context of the GATT, WTO and by the arbitral tribunals under the BITs (bilateral investment treaties). It also took into account the analyses of the MFN provisions in the UNCTAD and the OECD. The study establishes the contemporary relevance and importance of MFN Clause.

6. We agree with the conclusion of the Commission that the 1969 Vienna Convention on the Law of Treaties should be the basis and point of departure in the interpretation of investment treaties, including the MFN Clauses in those treaties. This would avoid the

selective interpretative methodologies adopted by the arbitral tribunals dealing with investment disputes, which in the past led to inconsistent decisions that generally went against States.

7. The recent decisions of the arbitral tribunals to apply the MFN clauses to the dispute settlement provisions also, rather than confining to the substantive obligations under the BITs, added a new dimension. In view of this, it is apt to welcome the summary conclusion of the Commission that it is for the States, while negotiating the BITs, to determine the scope of application of MFN clauses, i.e., whether to confine application of the MFN clause to the substantive obligations and to exclude in explicit and unambiguous terms the dispute settlement provisions from its scope.

**Mr. Chairman**

8. In view of the contemporary relevance and importance of the MFN clauses in the trade and investment treaties, we welcome the Study Group's Report and the interpretative techniques reviewed therein and also the Commission's summary conclusions. They should guide the States, arbitral tribunals and other relevant actors in the field.

**Mr. Chairman,**

9. Turning to the topic 'Protection of the atmosphere', we congratulate the Special Rapporteur, Prof. Shinya Murase for his second report, which the International Law Commission considered at its 67<sup>th</sup> session this year. We appreciate the efforts of Prof. Murase for further analysis of the draft guidelines submitted in his first report and providing revision thereof. We would also like to appreciate him for organizing dialogue with scientists on the topic during the ILC session.

10. The five draft guidelines prepared and submitted by the Special Rapporteur in his second report deal with the use of terms, scope of the guidelines, common concern of humankind, general obligation of States to protect the atmosphere and, international cooperation.

11. We agree with the decision of the Commission to address the subject matter of draft guideline 3 (on common concern of

humankind) in the preambular part, and the reasons given for that in the commentary.

12. Considering the threats posed to the atmosphere, in particular, by air pollution and ozone depletion, the protection of atmosphere is extremely important for the humankind and so it becomes a general obligation of all States to protect the atmosphere. This general obligation is the subject matter of draft guideline 4 which requires more study and analysis. In this context, we appreciate the wisdom of Prof. Murase for having requested to defer consideration of that draft guideline by the Drafting Committee. It will provide more time for detailed and in-depth study and analysis of the subject matter of the guideline, namely, the States' obligation to protect atmosphere.

13. The Commission has, following the report of the Drafting Committee, provisionally adopted draft guidelines 1, 2 and 5. India notes with appreciation the future plan of work on the topic presented by the Special Rapporteur as reflected in paragraph 47 of the ILC Report. In this context, we would like the Commission to continue to strengthen its research on relevant theories and practices in a rigorous manner, and gradually clarify relevant guidelines.

**Mr. Chairman,**

14. With regard to Chapter XII of the ILC Report, we welcome the decision of the Commission to include in its programme of work the topic "*Jus cogens*" and appointment of Mr. Dire Tladi as the Special Rapporteur for the topic. *Jus cogens*, being peremptory norms of general international law, the aspects thereof to be chosen for study, would be of interest for all.

**Mr. Chairman,**

15. Finally, in conclusion, we would like to congratulate the Commission and others for successfully holding the fifty-first session of the International Law Seminar pursuant to the General Assembly resolution 69/118. India was one of the voluntary contributors to the United Nations Trust Fund for the International Law Seminar. These annual Seminars make valuable contribution in allowing successive generations of young international lawyers, especially Government lawyers and diplomats to familiarise with the work and

topics of the Commission and prepare them for careers in international law.

**Thank You.**