

# Islamic Republic of I R A N

Permanent Mission to the United Nations

Statement by

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On Agenda item 83:  
**Report of the International Law Commission  
on the work of its sixty-seventh session**

Chapters V:  
Protection of Atmosphere

New York, 3 November 2015

In the name of God, the most Compassionate the most Merciful

**Mr. Chairman,**

At the outset I would like to begin by expressing my delegation's appreciation to Mr. Narinder Singh, Chairman of the International Law Commission for his comprehensive presentation on the work of the Commission at its sixty-seventh session. We commend the members of the Commission for their contributions to the work of the Commission on its agenda items. We also recognize the efforts of the Codification Division of the Office of Legal Affairs as the secretary of the Commission.

On the topic "protection of atmosphere", my delegation would like to appreciate the considerable efforts made by Mr. Murase, the Special Rapporteur, and other members of the Commission in preparation and consideration of the second report.

The Commission's work on protection of atmosphere is aimed at preventing future loopholes in the legal regime applicable to protection of atmosphere. Therefore, we believe that the Commission should also include study on all sources of pollutants and substances detrimental to the atmosphere, in particular radioactive and nuclear emissions due to their potential longstanding and transboundary risks.

Similarly, in guideline 2, paragraph 3, some specific substances such as black carbon, tropospheric ozone, and other dual-impact substances have been excluded from the scope of the guidelines. While this has been done so as not to interfere with the results of the ongoing negotiations among Member-States, we are of a view that a

“without prejudice” clause is more helpful and appropriate than exclusion of a specific substance from the scope.

As regards the decision of the Commission to replace the phrase “common concern of mankind” with some paragraphs in the same context in the preamble, we consider this modification as an appropriate measure in order to include more legal concepts in the guidelines. Furthermore, the atmosphere is the Earth’s largest single and one of the most important natural resources, (as it was listed as a natural resource by the former United Nations Committee on Natural Resources, as well as the 1972 Stockholm Declaration on the Human Environment and the 1982 World Charter of Nature), we therefore, believe that the phrase “common heritage of mankind” along with the phrase “pressing concern of the international community” is more relevant and properly refers to the atmosphere in legal terms.

Article 136 of UNCLOS qualifies the *Area* as common heritage of mankind. Article 137(2) of the same Convention stipulates " all rights in the resources of the area are vested in mankind as a whole on whose behalf the Authority shall act". The ITLOS in its advisory opinion on *Responsibilities and Obligations of States Sponsoring Persons and Entities With Respect to the Activities In the Area*, dated first February 2011 referring to this provision, argued that beside the Authority “each State Party may also be entitled to claim compensation in light of the *erga omnes* character of the obligations relating to preservation of the environment of the high seas and in the Area”. in support of this view ITLOS in paragraph 180 of its Advisory Opinion refers to article 48 of the International Law Commissions draft articles on State Responsibility. This provision concern the invocation of responsibility of State other than injured State in case of violation of an *erga omnes partes* obligation. Such a mechanism could be envisaged for the protection of atmosphere .

**Mr. Chairman,**

On the issue of cooperation which has been referred by the Special Rapporteur as one of the principles of modern international law applicable to protection of atmosphere, it is worth noting that the obligation to cooperate in international law is a vague and undefined legal concept. On the proposal regarding the extension of cooperation to the legal regime applicable to the protection of atmosphere, we maintain that it is imperative to carry out an in-depth study to explore the technical aspects of the issue. There is also a need to agree on the different elements of cooperation, before suggesting its inclusion in any legal framework. The same concern exists in relation to the principles of international environmental law, *inter alia*, concerning sustainable development, and their applicability with regard to the topic. The second report of the Special Rapporteur merely makes reference to these principles without further elaboration and analysis in the context of the topic. The relationship between the protection of atmosphere and aforementioned concepts deserves genuine consideration in the Commission’s future work on the topic.

To conclude, **Mr. Chairman**, the development of an international legal regime on the protection of atmosphere in light of principles of international environmental law is feasible only if due consideration is given to the well-established concepts in the field, namely intra-and intergenerational equity as well as the special needs and priorities of the developing countries.

**I thank you Mr. Chairman.**