



PERMANENT MISSION OF FINLAND TO THE UNITED NATIONS  
866 UN PLAZA, SUITE 222, NEW YORK, NY 10017 - TEL. 1-212-355-2100 - FAX 1-212-759-6156

Sixth Committee  
International Law Commission, Cluster I (Agenda Item 83)  
Nordic Statement

Statement by

H.E. Ms. Marja Lehto  
Ambassador  
Ministry for Foreign Affairs of Finland

New York, 2 November 2015

(check against delivery)

Mr. Chairman,

I have the honor to speak on behalf of the five Nordic countries: Denmark, Iceland, Norway, Sweden and my own country, Finland.

The Nordic countries attach great importance to the work of the International Law Commission and welcome its latest report. The multiplication of specialized channels for international law-making is a fact, but there is still a need for a global perspective to the development of international law. The Nordic countries are convinced that the mandate of the Commission is as relevant as ever.

The Nordic countries note with satisfaction the efforts to make the documents of the ILC more easily accessible on the ILC website. Furthermore it is of importance to the Member States that information in the annual reports of the ILC is provided in a practical format. We therefore welcome that the presentation of the draft conclusions provisionally adopted by the Drafting Committee are included in the report of the ILC. This increases the user-friendliness of the report as all the relevant information is available in one place. We hope that the Commission will continue with this practice also in future.

Mr. Chairman,

The protection of the atmosphere is a fundamental issue for all human beings and the international community as a whole. The Nordic countries are in favour of developing guidelines that may assist the international community as it addresses critical questions relating to transboundary and global protection of the atmosphere. It is a topic where International cooperation is at the core. At the same time it is important that this work does not interfere with or duplicate relevant political negotiations, including those on long-range transboundary air pollution, ozone depletion and climate change.

The Nordic countries furthermore agree with the decision of the Commission to express the concern of the international community with regard to problems relating to the atmosphere as a matter of a factual statement in the draft preamble to the guidelines, rather than as a normative statement, and using the phrase „a pressing concern of the international community as a whole“.

We would furthermore like to draw your attention to the restriction of the definition of atmospheric pollution in article 1 (b) of the draft guidelines to effects extending beyond the State of origin. While we understand the rationale behind the formulation, we wonder whether it is suitable to incorporate the restriction into the definition article. Rather, we feel that the matter belongs to the scope of application dealt with in the draft guideline 2.

We would also like to express the support of the Nordic countries to the formulation of a duty to cooperate. We support the particular wording in draft Guideline 5 on the obligation of States to cooperate, with the wording „as appropriate“, leaving some room for flexibility depending on the nature and subject matter of the point of cooperation, and the forms in which cooperation could occur. This qualification may also influence the assessment of any potential international responsibility.

Much work has already been done in the field of International Environmental Law, especially in regard to Climate Change. We are hopeful that the ILC work on this issue, in line with the scope of the topic as decided in 2013, and the guidelines it will produce will bring added value to the Environmental Law Regime while acknowledging work already concluded and existing treaties. We thank Special Rapporteur Murase and the ILC for the work concluded so far and we look forward to watching the progress of this work and seeing more paragraphs of the Draft Guidelines.

Mr. Chairman,

The Nordic countries commend the work and the final report of the ILC Study Group on the Most-Favoured Nation clause, which is ably chaired by Mr Donald McRae. We are convinced that the methodical promotion of the identification of the more precise legal content of various MFN clauses may contribute to a greater coherence of international law in this field. An important aspect of this is the grounding of the Study Group's methodic approach in the principles reflected in articles 31-33 of the Vienna Convention on the Law of Treaties. This is in line with the analysis provided by the Commission in the context of its study on the fragmentation of international law.

Furthermore, we consider that the Study Group has been right in drawing upon the practice and considerations that have emerged from GATT, the WTO, OECD and UNCTAD and considering a typology of various sources of case-law, including in particular arbitral awards. This has shown the existence of differences in approaches taken in the interpretation of MFN provisions, particularly by various arbitrators.

We also appreciate the work of the Study Group to identify the contemporary challenges posed by MFN clauses, including whether MFN clauses are to encompass dispute settlement provisions in investment treaty arbitration. This has clearly brought a new dimension to the discussion about MFN clauses.

Mr. Chairman,

The Nordic countries welcome the final report of the Study Group and believe that it will be a useful tool for promoting legal certainty. We commend the work laid down over the years on this important issue, and take note of the practical implications the report may indeed have on treaty practice.