

**Statement by Mr. RHEE Zha Hyoung**

**Counsellor of the Republic of Korea to the United Nations**

**General Assembly Sixth Committee**

**Report of the International Law Commission on the work of its sixty-seventh session [Agenda 83]**

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Mr. Chairman,

First of all, my delegation would like to join other delegations that expressed their appreciation for the new website of the ILC. Dissemination of information in an easily accessible way is of great importance in fostering the rule of law, and in this regard, we encourage continued and further improvement of the relevant websites, including that of the Sixth Committee.

My Delegation welcomes the final report of the Study Group on the Most-Favoured-Nation Clause. This delegation would like to express its appreciation to the co-chairs, Professor McRae, Ambassador Perera, and Professor Forteau. We would also like to thank the ILC members who participated in the Study Group.

The general orientation of the final report on the most-favoured-nation (or MFN) clause is a further analysis of the prior work done by the Commission, namely the 1978 draft articles on the MFN clause. My delegation considers this final report, which reflects the developments subsequent to the completion of the 1978 draft articles, in particular in the area of international investment, to be quite useful and relevant in practical terms.

Mr. Chairman,

With regard to Chapter V, protection of the atmosphere, my delegation welcomes the second report of Special Rapporteur Mr. Shinya Murase and would like to thank him for his efforts. We would also like to extend our sincere appreciation to the ILC members, and in particular the Drafting Committee, for their work to further develop the discussions.

Regarding the protection of the atmosphere, my delegation welcomes the ILC's adoption of the

preamble, guideline 1 (use of terms), guideline 2 (scope of guideline), and guideline 5 (international cooperation), and the commentaries thereto. During last year's session, we expressed our concern over what we saw as the exceedingly abstract and controversial nature of this topic. We welcome the fact that the ILC has been able to achieve progress during this year despite these challenges.

Concerning the text of the draft guidelines on the protection of the atmosphere, together with the preambular paragraphs, and the commentaries thereto, provisionally adopted by the Commission at its sixty-seventh session, my delegation would like to make the following comments.

First, my delegation supports the preamble adopted by the ILC. In particular, we take note of the overarching and comprehensive acknowledgement of the importance of the atmosphere with its reference to the functional aspect of the atmosphere as a medium through which the transport and dispersion of polluting and degrading substances can occur, and to the fact that the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a "pressing concern of the international community as a whole."

This delegation respects the conclusions reached by the Commission pertaining to Guideline 1: Use of Terms, adopted together with the commentary thereto. In particular, this delegation supports the Commission's decision to include from last year's discussions only the agreed-upon physical description of the atmosphere and to refer to this functional aspect of the atmosphere in the second paragraph of the preamble with the phrase "atmospheric circulation", while omitting the controversial parts pertaining to the conceptual definition of the "atmosphere". My delegation would like to express our gratitude to the Special Rapporteur for organizing a consultative meeting between the ILC and scientists to gain a mutual understanding on this topic.

This delegation would like to thank the Commission for its efforts to confirm the working definitions of "atmospheric pollution" and "atmospheric degradation" in draft principle 1. My delegation affirms the necessity to define these terms for the purposes of this discussion. In particular, this delegation welcomes the adoption of the narrow definition of "atmospheric pollution" in line with existing treaty practice – based on Article 1(a) of the 1979 Convention on Long-Range Transboundary Air Pollution. This delegation also takes note of the explanation in the commentary that the word "substances" includes "energy" and of its clarification. Although there remains some doubt about how to distinguish between intended releases of "energy" from that of unintended emissions due to natural disasters, my delegation appreciates the Commission's efforts to define "energy" for further clarification purposes.

Draft guideline 2 sets out the scope of the draft guidelines in relation to the protection of the atmosphere. Most of all, this delegation welcomes the discussions reflecting the 2013 understanding of the Commission. In particular, we note that the issues that are not covered by the present draft guidelines have been specified in paragraphs 2 and 3. We look forward to the proceeding of the discussions based on the prior agreements in the 2013 understanding.

My delegation recognizes the importance of international cooperation for the protection of the atmosphere from atmospheric pollution and atmospheric degradation. Enhancement of scientific knowledge and exchange of information is of particular importance. Accordingly, my delegation also considers draft guideline 5, with its emphasis on the importance of international cooperation, as the core of the whole set of draft guidelines. Having said that, my delegation is doubtful about the wisdom of using the expression "States have an obligation to cooperate." Instead, the expression "States shall cooperate" is more frequently employed in other treaties. The commentary also states that the expression "as appropriate" denotes certain flexibility and latitude, but my delegation would like to express our concern and belief that this may rather increase the ambiguity of the provision.

Lastly, my delegation would like to make a comment on the 2016-2020 long-term work plan described in paragraph 79 of the Special Rapporteur's second report. My delegation considers the suggested future work, which aims to cover all the issues related to the topic, to be too comprehensive. This comprehensive plan would inevitably override the 2013 understanding of the Commission. My delegation also considers the plan for the fifth report, which will relate to the other relevant areas of law, to be too broad. Moreover, the planned sixth report on compliance and dispute settlement may trigger the opening of another round of debates. Although the development of a detailed plan may not be fully achievable at this moment, my delegation is of the view that the scope of future work of the Special Rapporteur is better to be limited to those prescribed in draft guideline 2.

Thank you, Mr. Chairman.