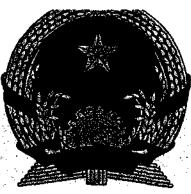

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Statement by Mr. Vu Minh Nguyen

Director General, Legal Adviser of Viet Nam

at the 70th Session of the Sixth Committee of UNGA

on Agenda Item 83: "Report of the International Law Commission"

Cluster I (Chapter IV, V & XII)

(3rd November 2015, New York)

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Thank you Mr. Chairman,

Our delegation joins other delegations in commending the work of the International Law Commission in the progressive development of international law and its codification.

In my statement I will address Chapter IV, Chapter V and Chapter XII of the report of the Commission in the order of their appearance.

With regards to The Most-Favored-Nation clause topic, we welcome the final report of the Study Group and warmly congratulate Mr. Donald McRea for his outstanding contribution as Chairman and Mr. Mathias Forteau, who served as chairman in the absence of Mr. McRea.

This topic has been closely followed by Viet Nam since its inception. The recent jurisprudence shows that the MFN clause found in thousands of investment agreement has the potential to be one of the most influential provisions with extensive legal ramifications.

Being a capital importing country, Viet Nam has concluded over 80 bilateral investment agreements and dozens of free trade agreements with an investment chapter. Most agreements contain the MFN clause as a standard. Many of these provisions were worded in a general way and are subject to a large extent to interpretation by the parties and arbitrators when disputes arise.

We note the conflicting views by arbitrations with regards to interpreting the MFN clause. In our view, some of the approaches have more or less steered away from the rules of treaty interpretation embodied in the Vienna Convention of the Law of Treaties (VCLT). This diversion might lead to a result that contracting parties did not intend at the time of treaty conclusion. On the one hand, uniformity in interpretation or application of the MFN clause could not be expected due to the very different wording of such clause. There is no formal doctrine of precedent in international law either. On the other hand, it is essential that judges and arbitrators maintain some level of consistency in their reasoning, which may in turn contribute to the credibility of their decisions and to the healthy development of international law.

Against that background, Viet Nam commends the efforts of the Study Group to explain, in a systematic way, the conflicting views of various arbitral tribunals over the scope and application of the MFN clause. We stand in full agreement with the conclusion that the interpretation exercise should be undertaken on the basis of the customary rules of treaty interpretation codified in Article 31 and 32 of the VCLT, namely the specific wording and surrounding context of the provision. This report marks an important contribution of the Commission to promoting and enhancing the consistency and predictability of international law. We encourage policy makers, government negotiators, arbitrators, lawyers and other practitioners to fully utilize this report in their practice of international investment law.

Now turing to the topic Protection of the Atmosphere, I am appreciative of the dedication of the Special Rapporteur, Mr. Shinya Murase and the progress achieved so far in this topic. I will have two brief comments.

Guideline 5 provides for the obligation of states to cooperate, as appropriate, in the protection of the atmosphere from atmospheric pollution and atmospheric degradation. It is widely agreed that the obligation to cooperate is found in various multilateral environmental agreements and was emphasized in the *Pulp Mills* case. As stated by the report, the forms and nature of cooperation may vary depending on the situation and the exercise of the margin of appreciation of States. The spectrum of cooperation may range from exchange of knowledge, capacity building, coordination of actions and so forth. While concurring with the statement in the first paragraph on the general obligation to cooperation, as appropriate, this delegation has difficulty with the second paragraph of guideline 5, which singles out one form of cooperation at the

expense of others. We takes the view that singling out any form of cooperation may impair the discretion of states to cooperate in a most appropriate manner.

Second, in line with the 2013 Understanding by the Commission, we support the final form of the project to be guidelines rather than principles or guiding principles. The latter term of "guiding principles" may connote some legal obligations on states through principles on the protection of the atmosphere, the very essence of which was pre-empted by the Commission.

Mr. Chair,

On the occasion of the 70th anniversary of multilateral diplomacy, let me say a few words about the laudable contribution by the Commission to promoting respect for the rule of law at international level.

Time and time again, we have seen draft articles prepared by the Commission served as the basis for negotiation in multilateral treaty processes. Outcomes of many processes have become the backbone of international relations. More importantly, several other draft articles of the Commission have become an embodiment of customary international law. The efforts of the Commission to promote the rule of law through nurturing the future generation of international lawyers is another noteworthy contribution. We very much suport the International Law Seminar, which in our view, presents a valuable opportunity for young lawyers from developing countries to advance their understanding of the Commission's work and international law.

In conclusion, Mr. Chair, 2015 has been a very fruitful year for the Commission. Besides ongoing projects, the Commission has decided to include "*Jus cogens*" in its program of work and appoint Mr. Dire Tladi as the Special Rapporteur. Our delegation would follow this topic with great interest.

I thank you for your kind attention.