



PERMANENT MISSION
OF THE KINGDOM OF TONGA TO
THE UNITED NATIONS

**Statement of H.E. Mr. Mahe 'U. S. Tupouniua
Permanent Representative of the Kingdom of Tonga to the United Nations
On Agenda Item 81: The Report of the International Law Commission
at its 69th Session (Cluster 2),
At the Sixth Committee of the 72nd Session of the United Nations General Assembly**

New York, Wednesday, 25th October 2017

Check against delivery

Mr. Chairman,

Thank you for giving my delegation the floor once again to speak on Cluster II of this Agenda Item, and before doing so, allow me to align with the statement delivered by the Permanent Representative of Marshall Islands on behalf of the Pacific Small Island Developing States.

At the outset, allow me to commend the International Law Commission on its retention of the topic of "Protection of the Atmosphere" in its long term programme of work¹ and its progressive development as contained in Chapter VI of its Report on the work of the sixty-ninth session. We also welcome the dialogue which took place between the Commission and a group of scientists on the subject matter and we encourage such dialogue in the future work of the Commission in light of the important role scientific findings play in the developed of these guidelines.

Mr. Chairman,

Allow me also, through you, to commend the Special Rapporteur, Professor Shinya Murase, on his Fourth report on the Protection of the atmosphere, which builds upon his first three reports, setting out considerations on the feedback provided last year by this Committee, and a thorough analysis on the key issues relevant to this topic.

Mr. Chairman,

The atmosphere, a common resource shared by all humankind, has been suffering from ongoing disruptions caused by human actions, which continue to detrimentally impact our planet in a significant way. Whilst we recognize that there are existing complex regimes in international law addressing climate change and ozone depletion, the fragmented approach they present remains a challenge in the efforts to protect the atmosphere through concerted efforts at the national, regional and international levels. As it has been acknowledged in numerous studies and reports, including the *fourth report on the protection of the atmosphere* by the Special Rapporteur, small

¹ Report of the International Law Commission on the work of its sixty-ninth session, A/72/10 (2017) para 28, p.7

island developing States are particularly susceptible to the impacts of climate change. As a result, countries like Tonga continue to remain particularly susceptible to these challenges.

Mr. Chairman,

In our intervention last year, we conveyed the view that it was essential that the interrelationship of the draft guidelines with existing legal instruments be further elaborated. As such, we are pleased to see these considerations being made in the Special Rapporteur's report in his selection of the fields of international trade and investment law, law of the sea, and international human rights law and providing an elaborate analysis of the importance of these fields of law to the protection of the atmosphere.

In this regard, we commend the Commission for capturing these broadly in Draft guideline 9 and the related preambles as adopted by the Commission and presented in page 155 of the Commission's report.

Mr. Chairman,

The protection of the atmosphere, as we had mentioned, requires coherent efforts and actions. Paragraph 1 and 2 of Draft guideline 9 provides practical solutions in dealing with the fragmented nature of the existing regimes by identifying the relevant areas of law and encouraging States to interpret and apply existing obligations under international law with those relating to the protection of the atmosphere in a harmonious manner. The inclusion of the phrase "including *inter alia*" is essential to ensure the list is one which is not exhaustive, as future developments may reveal other areas of law which may be of importance.

Tonga also welcomes paragraph 3 of Draft guideline 9 and the related preambular paragraph, which sets out the need for special considerations to be given to groups which are vulnerable to atmospheric pollution and atmospheric degradation. We welcome, in particular, the reference made to small island developing States that are placed in a vulnerable situation due to the most evident impact, which at present is sea level rise and the potential legal implications it carries with it.

Mr. Chairman,

Last year, Tonga had stated the need for further substance on the action of States and we recognize that this concern will be addressed in the Special Rapporteur's report in 2018 on his work relating to (a) implementation, (b) compliance and (c) specific features of dispute settlement related to the law on the protection of the atmosphere.

Mr. Chairman,

To conclude, Tonga reiterates the importance of this topic and its retention. We wish to convey our support to the International Law Commission and the Special Rapporteur on the ongoing work on this topic.

I thank you Mr. Chairman.