



## UNITED STATES MISSION TO THE UNITED NATIONS

799 United Nations Plaza  
New York, N.Y. 10017

**Statement by the United States of America  
72<sup>nd</sup> General Assembly Sixth Committee  
Agenda Item 81 – Report of the International Law Commission on the Work of its 69th  
Session  
Mark A. Simonoff, Minister Counsellor  
October 27, 2017**

### **Protection of the Atmosphere**

Mr. Chairman, regarding cluster 2, Acting Legal Adviser Richard Visek delivered the US statement on immunity on October 25th. Accordingly, I will only discuss the topic “Protection of the Atmosphere” today. We continue to be concerned about the direction the Commission appears to be taking with respect to this topic.

Our original concerns, which have only intensified as this topic has progressed, run along two main lines.

First, we did not believe that this topic was a useful one for the Commission to address. Various long-standing instruments already provide general guidance to States in their development, refinement, and implementation of treaty regimes, and, in many instances, very specific guidance tailored to discrete problems relating to atmospheric protection. As such, we were concerned that any exercise to extract broad legal rules from environmental agreements concluded in particularized areas would not be feasible and might potentially undermine carefully negotiated differences among regimes.

Second, we believed that such an exercise, and the topic more generally, was likely to complicate rather than facilitate ongoing and future negotiations and thus might inhibit State progress in the environmental area.

Accordingly, we opposed inclusion of this topic on the Commission’s agenda. Our concerns were somewhat allayed when the Commission adopted an understanding in 2013, which we hoped might prevent the work from straying into areas where it could do affirmative harm. Contrary to these expectations, however, all four reports that have thus far been produced have taken an expansive view of the topic. And while we had concerns with many aspects of the draft guidelines previously provisionally adopted by the Commission, the most serious related to

the purported identification of “obligations” or “requirements” in contravention of the 2013 understanding that work on this topic would not impose new legal rules or principles on current treaty regimes. This year the Commission has strayed even further from this understanding by provisionally adopting a guideline that purports to inject consideration of the atmosphere not only into the interpretation and application of treaties, but more broadly into the development of any new rule of international law.

Looking forward, we are particularly concerned by the Special Rapporteur’s proposed long-term plan of work. If it were to be followed, the work would continue to stray outside the scope of the understanding and into unproductive and even counterproductive areas. For these reasons we call upon the Commission to suspend or discontinue its work on this topic.