Islamic Republic of
I R A N
Permanent Mission to the United Nations

Statement by

Mr. Sattar Ahmadi
Representative of the Islamic Republic of Iran
before
The Sixth Committee of the United Nations General Assembly on
Report of the International Law Commission on the Work of its sixty – ninth session
(agenda item 82)
Cluster II Chapters: VI (Protection of the atmosphere)
VII (Provisional application of treaties) and
VIII (Peremptory norms of general international law)

New York, 30 October 2017

In the name of God, the Most Compassionate, the Most Merciful

Mr. Chairperson,

On the topic "**Protection of the atmosphere**", my delegation would like to thank the Special Rapporteur, Mr. Shinya Murase, for his hard work in preparing the fifth report on the topic contained in document A/CN.4/711 which was devoted to questions concerning implementation, compliance and dispute settlement.

We take note the adoption of the first reading, a draft preamble and 12 draft guidelines, together with commentaries thereto by the commission. The topic of protection of the atmosphere is fraught with difficulties as it is tightly interlinked with political, technical and scientific considerations.

The Islamic republic of Iran attaches great importance to the topic we deem that the development of an international legal regime on the protection of atmosphere in line with general principles of international law in particular principle of sovereign equality of states is achievable only if due consideration is given to the special needs and priority of the developing countries.

My delegation considers that the concept of " the common concern of humankind" is more appropriate than the concept of "pressing concern of the international community as a whole", in the 4th preambular paragraph of the draft guidelines. The concept "the common concern of humankind" is well – known concept has already been supported and reflected in preambular paragraph of the Paris Agreement concluded in 2015.

622 Third Ave, New York, NY 10017 Tel: (212) 687-2020 Fax: (212) 867-7086 email: iran@un.int

We also take note of the Commission's request for comments and observations from States to be submitted to the Secretary-General by 15 December 2019. My delegation will be considering the twelve draft guidelines and the commentaries thereto and provide our comments in due course before the given deadline.

Mr. Chairperson,

As regards **Provisional Application of Treaties**, my delegation would like to express its appreciation to the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, for his fifth report on the topic. We are sure the final outcome of the work, including the guidelines and the commentaries thereto, could contribute to clarification of the diverse aspects of the institution of provisional application of treaties.

On the topic under consideration, let me start with some general comments:

We wish to reiterate that the article 25 of VCLT on provisional application of treaty merely offered States the possibility of provisional application without imposition of any obligation. As a result, the provisional application would not serve as a basis for restricting States' rights with regard to their future conduct in relation to the treaty that might be provisionally applied. It is also crucial that the principle of consent prevailing in international law and particularly law of treaties as well as flexibility and non-binding nature of the proposed provisions remain to be the core element of present topic. Therefore, provisional application of treaty by a state party to that treaty should only be considered as voluntary rather than mandatory.

In that context, we align with the view expressed by the special rapporteur in paragraph 82 of his report that the present guidelines, without detracting from the flexibility inherent in the mechanism of provisional application by overdeveloping the regime set out in article 25 of VCLT, will merely serve as a practical tool for the growing number of users of international law.

We deem that the present guidelines would be applicable to multilateral treaty and do not cover and address bilateral treaties, while the later could not, because of its nature and parties, be provisionally applied. In other words, the basic principle of equality of states and the reciprocity of the rights and obligations as a result of their bilateral treaties and relations, leave no logical reasoning to the temporary application of bilateral treaties.

My delegation concurs with the view that jurisdictions with legal dualism in which treaties entered into force needs internal legal procedure, provisional application of treaties become applicable only after their acceptance through internal procedures.

We also welcome that the Special Rapporteur deemed it necessary to add a draft guideline on formulation of reservation with regard to the provisional application of a treaty or a part of a treaty, while according to article 19 of VCLT, a state may make reservation to a treaty. Thus, a State's provisional application of a treaty does not preclude its right to enter reservations to that treaty.

That being said, I would like to make two main observations to the draft Guideline 4 as following:

First, Draft Guideline 4 refers to form of agreement on provisional application of a treaty. we maintain that in case of silence of the treaty concerning provisional application such formality should be applied as well. On this Draft Guideline, we reiterate our concern regarding agreement purportedly demonstrated through "resolutions", "declarations" or "any other means or arrangements"; while resolutions adopted at international forums carry some weight with respect to treaties they refer to, they are sometimes results of political convenience and synergy and do not always reflect consent of States to give effects with respect to treaties including provisional application thereof. Furthermore, the phrase "any other means or arrangements" seems too broad.

Second, while the role of provisional application of a treaty is rightly said to be to facilitate its entry into force, we acknowledge that the conclusion "a separate treaty" as in Paragraph (a) of Draft Guideline 4 would be considered procedural than substantial one which its aim is merely to facilitate such entry into force as it requires its own separate process.

Mr. Chairman,

Turning to the topic **Peremptory Norms of General International Law (*Jus Cogens*),** we welcome the third report presented by the Special Rapporteur, Mr. Dire Tladi which examines the consequences and legal effects of peremptory norms of general international law (jus cogens).

In this context, I would like to make the following comments:

We are in agreement with the Draft Conclusion 17 which states; binding resolutions of the Security Council of the United Nations do not establish binding obligations if they conflict with jus cogens. As asserted rightly by special rapporteur in paragraph 152 of his report to the Commission, it is generally agreed that the rule of non-derogation from peremptory norms would be equally applicable to Security Council resolutions. In this regard, we are of the conviction that article 103 of the Charter of the United Nations only affirms that in the event of a conflict between the obligations under the present Charter itself and the obligations under any other international agreement, their obligations under the present Charter would prevail. Therefore, in the event of conflict between norms of jus cogens and Charter obligations, jus cogens norms remain superior and article 103 of the Charter of the United Nations will not be applied. In this context, we also consider those resolutions of the Security Council are inconsistent with international law and the provisions of the UN Charter, do not create any obligation for States.

My delegation concurs with the proposed Draft Conclusions 20 and 21, regarding a duty of cooperation to end jus cogens violations and of their non-recognition or render assistance which are obviously inspired by Articles 40 and 41 of the Articles on State Responsibility. We consider that obligations under paragraph 2 of article 41 of the Articles on State responsibility constitute as *progressive development of international law which have been recognized and supported by* the International Court of Justice in the *Namibia case*, as well as in the *Legal Consequences of the Construction of a Wall* advisory opinion. *The* Court in the latter case determined that "all States are under an obligation not to recognize the illegal situation resulting" from the breach of obligations arising from *jus cogens.* It also held that there was an obligation not to "render aid or assistance in maintaining the situation" created by the breach. However, we maintain that, a paragraph should be added to the effect that non-recognition should not

disadvantage the affected individuals or population. Thus, the relevant acts such as registration of births, deaths and marriages ought to be recognized, in line with ICJ's dictum in Namibia which is identified as Namibia Exception.

Finally, on draft Conclusion 23, providing for the non-applicability of immunity ratione materiae for offences prohibited by jus cogens, the practice cited by the Special Rapporteur in the third report does not support the draft Conclusion proposed. We consider that the Draft Conclusion 23 crossed the limits of its corresponding provision drafted in the other work of the Commission, that is, Immunity from Foreign criminal jurisdiction. Thus, any inclusion of such a provision could be problematic. Furthermore, this make it more difficult to reach consensus on two other works, namely crimes against humanity and immunity of state officials from foreign criminal jurisdiction which are currently examined by the Commission. Therefore, it deems necessary for the Commission to refrain from addressing these issues in the context of the topic of jus cogens or providing any prejudgment before preparing its final outcome in related matters, in order to avoid any potential inconsistency and duplication.

Thank you, Mr. Chairman,