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Statement by the Republic of Korea

73rd General Assembly Sixth Committee

(Agenda Item 82) Cluster 2: Protection of the atmosphere / Provisional application of treaties / Peremptory norms of general international law

Mr. Chairman,

On behalf of the delegation of the Republic of Korea, I would like to express my deep gratitude to the ILC for adopting the draft guidelines on the **"protection of the atmosphere"** on first reading. I also would like to express our deep appreciation to Special Rapporteur Mr. Shinya Murase for his outstanding work and to ILC members for their efforts to enable the Commission to reach a successful conclusion at its first reading of the draft guidelines.

My delegation recognizes that the draft guidelines suggested by the Special Rapporteur in his fifth report have been greatly amended subsequent to the discussion at the Commission and the work of the Drafting Committee. This topic is especially meaningful in that there are increasing concerns about transboundary air pollution including the fine dust problem. It should take the form of a "guideline", and, as stipulated in the eighth paragraph of the preambular part, the draft guidelines should not interfere with relevant political negotiations on other environmental issues nor seek to fill gaps in existing treaty regimes. As such, the ILC's work should focus more on how to facilitate and promote future-oriented cooperation among interested States, and my delegation believes the ILC is taking appropriate approaches in this respect.

Let me now make more detailed comments on the text of the draft.

First, regarding draft guideline 10, which deals with implementation, my delegate

believes that it was appropriate to make a distinction between the national practice of "obligation" and "recommendations" by dealing with them separately in paragraphs 1 and 2. Also, the third paragraph of the commentaries clearly notes which provisions constitute the obligations that are stipulated in draft guidelines 3, 4 and 8 for protecting the atmosphere, and the fifth paragraph of the commentaries reaffirms that these obligations refer to the existing obligations of States under international law. However, the scope of "recommendations" is rather unclear in the commentaries, and the explanation on the scope of "recommendations" would be much more accessible if it was explicitly noted in the main text rather than a footnote.

Secondly, my delegation supports the approach in draft guideline 11 for achieving compliance. In particular, the two measures that can be taken to achieve compliance, namely "facilitative procedures" and "enforcement procedures", are well explained and clearly portrayed within the content structure as well as through the explanation provided in the commentaries. I believe that such a clear explanation in the commentaries will help to promote a comprehensive understanding of the issue and can serve as an authoritative document of international law.

Thirdly, my delegation welcomes the approach in draft guideline 12 on dispute settlement. Considering that the final outcome should take the form of a "guideline" and that disputes about atmospheric pollution and atmospheric degradation are fact-intensive and science-dependent, my delegation supports draft guideline 12, which recommends states to use technical and scientific experts. This is also evident in inter-State environment disputes, as noted in the second paragraph of the commentary.

Mr. Chairman,

Turning to the topic of "**provisional application of treaties**", my delegation welcomes the fifth report of Special Rapporteur Mr. Juan Manuel Gómez-Robledo and the adoption of the entire set of draft guidelines on provisional application of treaties on first reading. We express our deepest gratitude to the Special Rapporteur, ILC members and the Secretariat for their efforts.

Regarding new draft guidelines 7 and 9, my delegation welcomes the adoption of these draft guidelines, which concern the reservations and termination or suspension of provisional application. Given that States do not have any practice related to the reservations and termination of provisional applications, these new guidelines should be reviewed cautiously. Thus, my delegation supports draft guidelines 7, in which the phrase "in accordance with the relevant rules of the 1969 Vienna Convention on the Law of Treaties, applied *mutatis mutandis*" was inserted. This phrase was also inserted in draft guideline 9.

Regarding the draft model clauses, I have doubts about whether it is appropriate to make a set of draft model clauses on this topic. My delegation would like to express its concern about the ILC's elaboration of model clauses on provisional application as this could be deemed as encouraging States to apply a treaty or a part of a treaty provisionally. Notwithstanding that guideline 4 (form of agreement) prescribes various forms of agreement, the model clauses are designed for just one of these forms. Accordingly, my delegation is of the view that the ILC should carefully review this issue at the next session.

The Korean government believes that this topic will contribute to the development of treaties law. We will continue to take interest in further discussions on this topic and the outcomes. Once again, we would like to express our thanks to the members of the ILC and Special Rapporteur Mr. Gómez-Robledo for their outstanding work.

Mr. Chairman,

The Korean government would like to extend our appreciation for the work by the Special Rapporteur Dire Tladi and the ILC to present the third report on **"Peremptory norms of general international law"** and 14 draft conclusions on this topic. The report and the draft conclusions concern some of the most challenging aspects of international law including the relationship between peremptory norms of general international law in relation to treaties, state responsibility, individual criminal responsibility, and other sources of international law. Although there is insufficient practice and jurisprudence that

clarifies their relationship and its legal consequences, the Special Rapporteur has been able to produce a comprehensive report on these fundamental issues of international law and my delegation highly commends the Special Rapporteur and the ILC for their invaluable work.

Before commenting on the details, my delegation would like to express our concerns about the large quantity of suggested draft conclusions in such a short period. Because it cannot be easily changed, altered, or reversed, once it is decided, a careful review is necessary. I suggest grouping related draft conclusions when discussing them in ILC meetings, rather than discussing too many draft conclusions in a single instance. Given the time constraints, it will be more effective if we refrain from reviewing and commenting on too many draft conclusions.

With regard to the overall structure and content of the draft conclusions, my delegation is of the view that these draft conclusions can be compressed and simplified into more succinct provisions. In particular, the provisions regulating the relationship between a peremptory norm of general international law and treaties extend from draft conclusions 10 to 14, and it may be worth considering whether these provisions can be merged into fewer articles. For example, draft conclusions 10 and 11 both concern the validity of a treaty that is in conflict with a peremptory norm of general international law, and these two draft conclusions could be combined into one provision. Also, draft conclusions 20, 21 and 22 all deal with the responsibility of States, while draft conclusions 22 and 23 both concern crimes prohibited by peremptory norms of general international law. Similarly, these draft conclusions could also be combined into one or two provisions.

My delegation would also like to point out that some parts of the draft conclusions need to be clarified for better guidance to States. More specifically, many parts of the draft conclusions address the issue of "conflict" between various sources of international law, but the term "conflict" is rather ambiguous despite the significance of the term. The

challenge lies in that States can often have different characterizations and interpretations of their own actions such as the use of force, which can lead to disagreement among States in terms of whether a "conflict" does exist. Furthermore, questions can arise in terms of who decides on whether a conflict does exist as a matter of law. In this regard, more clarification may be necessary on some of the elements that States should consider when deciding whether a conflict does exist as a matter of law.

In addition, with regard to the formation of *jus cogens*, certain draft conclusions specifically address legal effects that result from the emergence of a new peremptory norm of general international law, but it is unclear as to when these legal effects take place. More specifically, draft conclusion 11 (2) provides that a treaty becomes void due to the emergence of a new peremptory norm of general international law, and draft conclusion 12(2) provides that the termination of a treaty due to the emergence of a new peremptory norm of general international law can affect rights, obligations or other legal situations created by the execution of the treaty. Yet, due to insufficient practice and jurisprudence on this matter, more discussions may be necessary for greater clarity to States.

Regarding future work, there is one point that my delegation would like to reiterate. It is more advantageous to provide an illustrative list of *jus cogens* norms as part of the draft conclusions. As noted by some, it may take some time to bring forth agreements on the list. Nonetheless, this list will significantly contribute to the progressive development of international law resolving various future possible disputes on identifying *jus cogens*.

My delegation would like to express our gratitude for the work of the Special Rapporteur and the Drafting Committee, and we look forward to further discussions on this topic.

Thank you, Mr. Chairman.