



PERMANENT MISSION  
OF THE KINGDOM OF TONGA TO  
THE UNITED NATIONS

**Statement by H.E. Mr. Viliami Va'inga Tōnē  
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At the meeting of the Sixth Committee on agenda item 82:  
Report of the International Law Commission at its 70<sup>th</sup> Session: Cluster 2**

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**Mr. Chairman,**

I thank you for giving me the floor to speak on Cluster 2, in particular Chapter VI of the Report of the International Law Commission on the Protection of the Atmosphere. We note with appreciation the work of the Special Rapporteur, Professor Shinya Murase and applaud him, the Drafting Committee and the Commission for the successful first reading of the preamble and 12 draft guidelines on the Protection of the Atmosphere.

**Mr. Chairman,**

The atmosphere is part of the cycle that sustains life on this planet we call home as rightly pointed out by the Special Rapporteur in the preamble of the draft guidelines adopted on the first reading by the Commission. It is a common resource shared by all of humankind and is therefore subject to an obligation *erga omnes* on all of us to protect it from the ongoing degradation that it faces on account of detrimental human activity, as reflected in Guidelines 3, 5, 6 and 7. Fulfilling this obligation is a significant challenge due to the sporadic and fragmented frameworks and regimes which govern different issues, substances and activities in siloes. However, we also understand the implications of the interconnected nature of the web of obligations and the intended effect of the implementation of such obligations, which is to achieve the needed conservation and sustainable use of our atmosphere for the current and future generations, as reflected in Guideline 9.

**Mr. Chairman,**

The newly proposed three draft guidelines speak to implementation, compliance and dispute settlement, which are the most important aspects of the law of the atmosphere and Tonga agrees that they are the “intrinsic and logical consequences of the obligations and recommendations” that were provisionally adopted prior to the Commission’s consideration of the fifth report. Tonga notes the meticulous work of the Special Rapporteur, which is reflected in the fifth report and the original draft guidelines proposed therein. We applaud the Commission and the Drafting Committee for their constructive consideration of the draft guidelines and the result thereof, which we fully support.

**Mr. Chairman,**

Tonga notes with great interest Draft Guideline 11. We agree with the reference to “compliance” as “the mechanisms or procedures [used] at the level of international law to determine whether States in fact adhere to the provisions of the treaty and to the implementing measures that they have instituted” and that “its use is not necessarily uniform in agreements, or in literature.” Indeed, for a small island developing State like mine, achieving and maintaining effective compliance are challenges we face due to lack of capacity and resources. Compliance requires more than concurrence with a cause in principle and the desire to comply. It requires the necessary capacity and resources, both of which are lacking for small island developing States. In this regard, we agree with the approach of the draft guidelines to recommend facilitative or enforcement measures in addressing non-compliance. Taking this bifurcated approach helps in distinguishing between those States that wish to comply but cannot do so due to the limited capacity and resources and the States that have the capacity to comply but refuse to do so. Facilitative measures are appropriate for States that yearn to comply but do not have the necessary capacity or the resources to do so.

In addition to the specific challenge indicated in paragraph 4 of the commentary to Draft Guideline 11, we note that access to financial mechanisms or other means of financial support is also a challenge for developing and least developing States. We emphasize here the importance of international cooperation, as indicated in Draft Guideline 9, to provide support both in terms of capacity building and providing adequate and sustained financial means to developing States, in particular, small island developing States to enable effective compliance with various applicable international agreements and frameworks, which are interlinked in protecting the atmosphere. We believe that the draft guidelines and the corresponding commentary provided here are helpful, as we move forward to finalizing the Paris Agreement Work Programme in Katowice this year.

**Mr. Chairman,**

In respect of Draft Guideline 12, we reaffirm the need to settle disputes in a peaceful manner and take special note of paragraph 2. Paragraph 2 emphasizes the need to use both technical and scientific experts when the circumstances of the case require it. It is only through such an approach that a holistic picture of the issues can be painted before the relevant tribunal or judicial body and an informed decision made thereon.

**Mr. Chairman,**

As reflected in the Preamble, we agree that protecting the atmosphere has implications for the well-being of the terrestrial and marine environments. The earth is but one and we cannot treat the atmosphere as existing in isolation. Earlier this month, we received the Intergovernmental Panel on Climate Change's Special Report on Global Warming of 1.5 degrees Celsius. In the Special Report, the panel has accorded high confidence to increase in global warming. The Special Report further notes, with high confidence, that "warming from anthropogenic emissions from the pre-industrial period to the present will persist for centuries to millennia and will continue to cause further long-term changes in the climate system, such as sea level rise, with associate impacts." Whilst we note that the emissions alone are not enough

to cause an increase to 1.5 degrees Celsius in the Earth's temperature, as a low-lying island nation, Tonga prefers a preventive approach to mitigate the cumulative impacts of global warming. These include increase in sea-level, desalination of our oceans, coral bleaching and ocean-acidification amongst others. In so saying, we believe the draft guidelines as adopted on first reading, and the accompanying commentary can provide useful guidance to States in addressing the impacts of climate change that are rapidly degrading our planet.

**Mr. Chairman,**

In conclusion, Tonga commends the Commission for the significant progress they have made on the topics under this cluster. We thank the special rapporteurs for the rigor and the energy that they have put into their reports and we urge all States to be seized of these issues and enhance cooperation and collaboration in the progressive development and codification of international law.

**I thank you.**