



**PERMANENT MISSION OF THE REPUBLIC OF
SIERRA LEONE TO THE UNITED NATIONS**

STATEMENT

by

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PERMANENT REPRESENTATIVE**

(Agenda item 82)

**"Report of the International Law Commission on the work of its
seventy-second session"**

Cluster I:

*Chapters: I, II, III, IV (Protection of the Atmosphere), V (Provisional
Application of Treaties) and X (Other Decisions)*

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Madam Chair,

1. My delegation is pleased to join the debate on agenda item: "Report of the International Law Commission on the work of its seventy-second session". Sierra Leone welcomes to New York Members of the Commission and Legal Advisers from capitals to this year's International Law Week in New York. It is a delight that we are now beginning to return to our rich tradition of extensive engagement between the Sixth Committee, legal advisers from capitals and Members of the Commission, despite the continuing challenges of the COVID-19 pandemic.
2. Sierra Leone aligns this statement with the statement delivered on behalf of the African Group. We thank the Chair of the Commission for the 72nd session, **Ambassador Mahmoud Hmoud** for introducing the report **A/76/10**. We congratulate the Commission on the progress made on the various topics discussed in the report. We thank the Codification Division of the Office of the Legal Affairs for their excellent Secretariat work for the Commission and the Sixth Committee, as well as for the extended briefing in September of Sixth Committee delegates on the work of the ILC's 72nd session.
3. Sierra Leone attaches great value and importance to the mandate of the International Law Commission in assisting the General Assembly in initiating studies and making recommendations for the purpose of promoting the "progressive development of international law and its codification" as set out in the Commission's 1947 Statute, derived from article 13 (1) (a) of the United Nations Charter. We re-echo the view of the African Group in that

the process of progressive development and codification of international law must always be inclusive and all-embracing in the consideration of law texts, State practice, precedents and doctrines as required by the ILC Statute. Efforts in that regard ought to also draw inspiration from the main principal legal systems of the world, including African customary law. Sierra Leone's continued active engagement with the work of the Commission, despite the pronounced challenges for small delegations, is to ensure these important objectives are duly realised. Sierra Leone remains committed to multilateralism and the rules-based international legal system, and we value the effective contribution of the Commission in maintaining this multilateral system, with due consideration given to the views of all Member States.

Madam Chair,

4. Despite the continuing challenges of the COVID-19 Pandemic, the report certainly shows that the Commission was very productive in its first ever hybrid-session, with the consideration of six (6) substantive topics, namely: **"Protection of the atmosphere"**, **"Provisional application of treaties"**, **"Immunity of State officials from foreign criminal jurisdiction"**, **"Succession of States in respect of State Responsibility"**, **"General principles of law"**, and **"Sea level rise in relation to international law"**.
5. Sierra Leone commends the Commission, and its Members, and pays tribute to Special Rapporteur, **Mr. Shinya Murase** of Japan on the adoption of the draft guidelines with commentaries thereto upon second reading on the topic **"Protection of the Atmosphere"**, comprised of a preamble

and 12 draft guidelines. Sierra Leone takes note of the recommendation of the Commission in paragraph 37 of the report, and as we continue to study the adopted guidelines and commentaries, my delegation makes the following preliminary observations:

a. **First**, Sierra Leone in appreciating the independence of the Commission remains unconvinced of the utility of the "understanding" to which the topic was subjected to and limited when it was added to the current agenda of the Commission at its 65th session in 2013. Having benefited from the comments by Member States and international organizations on the one part, and the debate by Members of the Commission on the other part, Sierra Leone agrees with the retention of a short reference to the "understanding" in the final paragraph of the Preamble not because we support this limiting approach to the work of the Commission, with respect to the scope in Guideline 2, but to assist with interpreting the adopted guidelines and commentaries within the context of the artificial limitation.

b. **Second**, also in the Preamble, Sierra Leone supports the deletion of the third preambular paragraph considering that atmospheric pollution and atmospheric degradation are "a pressing concern of the international community as a whole", a language adopted as compromise text in 2015, and replacing it with the more established international environmental law phrase "common concern of humankind." The latter language we note is found, inter alia, in the 1992 Convention on Biological Diversity, the 1992 UN Framework Convention on Climate Change (UNFCCC)

and in the 2015 Paris Agreement, as well as in General Assembly Resolution 43/53 in 1988; and significantly carries an *erga omnes* character.

- c. **Third**, Sierra Leone welcomes in the Preamble, the recognition of the special situation and needs of developing countries; and noting also the “special situation of low-lying coastal areas and small island developing States due to sea-level rise.” This recognition is vital for the consideration of law of sea and international environmental law topics and negotiations in the further progressive development and codification of international law.

- d. **Fourth**, Sierra Leone fully supports the addition of “energy” in the definition of “atmospheric pollution”, (contributing to significant deleterious effects extending beyond the State of origin of such a nature as to endanger human life and health and the Earth’s natural environment). Again, notwithstanding the “understanding”, we see alignment with existing international instruments including article 1 of the *Convention on Long-Range Transboundary Air Pollution*; and Article 1(1)(4) of the *UN Convention on the Law of the Sea*, both of which recognize that energy can be a source of pollution.

- e. **Fifth and finally**, on adopted Guideline 2 (Scope), Sierra Leone expresses regret over the deliberate exclusion of certain settled principles of international environmental law from consideration in the topic such as polluter’s pay, the precautionary principle and the common but differentiated responsibilities principle on the basis of the

so-called “understanding”. This approach is highly regrettable. For one thing, it must not set a precedent in the work of the Commission. Sierra Leone also does not consider that this exclusion can be a basis to question the well-established status and implications of those principles for the obligations of States under international law.

Madam Chair,

6. Similarly, Sierra Leone also commend the Commission, and its Members, and pays tribute to the Special Rapporteur **Mr. Juan Manuel Gómez Robledo** of **Mexico** on the adoption of draft guide with the commentaries thereto, upon second reading on the topic “Provisional Application of Treaties” comprised of a set of 12 draft guidelines and an annex containing examples of provisions on provisional application of treaties. Sierra Leone takes note of the recommendation of the Commission in paragraph 49 of the report, and as we continue to study the adopted guidelines, annex and commentaries, my delegation makes the following preliminary observations:

a. **First**, Sierra Leone acknowledges that provisional application of treaties, contemplated by the 1969 *Vienna Convention on the Law of Treaties* in Article 25, has become more common as a tool in State practice to give effect to all or some provisions of a treaty pending the completion of formalities for their entry into force, including for African States. Sierra Leone constitutional law, however, still requires internal approval for provisional application, that is completion

of the required formalities internally, in the same way for a treaty that has entered into force.

- b. **Second**, we appreciate the addition of the annex, containing examples of recent practice on provisional application of treaties, reflecting regional diversity, and providing useful guidance for States and international organizations.
- c. **Third**, on the adopted Guideline 3 (General rule), Sierra Leone in principle agrees with the first part of the general rule to the extent that the provisional application of a treaty or a part thereof between the States or international organizations concerned pending its entry into force has to be based on a provision contained therein as aligned to article 25 of the *Vienna Convention on the Law of Treaties*, 1969.
- d. **Fourth**, the second part of the general rule, that is, “*A treaty or a part of a treaty is applied provisionally pending its entry into force between the States or international organizations concerned, [...] if in some other manner it has been so agreed*”, is linked to Guideline 4 (Form of agreement), in our view, and requires further consideration. In situations where provisional application of a treaty or part of a treaty is agreed through a) separate treaty or b) any other means or arrangements, *including* by resolutions of international organizations or intergovernmental conference, attention must be paid to the fundamental principle of representation and inclusion that must inform resolutions adopted at international organizations

and intergovernmental conferences on the one part, and such resolutions must not be accorded the same weight as agreements between two or more States on provisional application, which are the clearest manifestations of State consent.

- e. **Fifth**, Sierra Leone takes notes of the prevalent State practice, in the context of provisional application, of *exchanges of notes or memoranda of understanding* or notifications of acceptance to provisional application to a treaty depository such as the Secretary-General of the United Nations. The key element in this aspect is the transparency element that should be taken into account in this prevalent practice.
- f. **Sixth and finally**, Sierra Leone notes the retention of Guideline 7 (Reservation) with modification to the previous first reading text, and although we continue to give serious consideration to this guideline, we further note the absence of relevant practice on provisionally applied treaties.

Madam Chair,

- 7. As the Commission has concluded a number of topics on the Commission's current agenda, we recall our statement on the issue of equitable geographical representation in the work of the Commission, and note that only one African member is currently serving as a special rapporteur, and another as co-chair of a study group. We call on the Commission, when deciding to add new topics, to consider a balanced approach to topics in terms of

interest as well as in the selection of special rapporteurs. This could help to enhance the legitimacy of the Commission's work. The fact that two current African members have successfully proposed three different topics for the long-term work program since 2018 gives a good account of the contribution of African jurists to the work of the Commission and international law. The Commission might consider taking this opportunity to begin to address the serious under representation of African special rapporteurs over its 72 year history.

8. Sierra Leone welcomes the decision of the Commission to place the topic "Subsidiary means for the determination of rules of international law", under article 38, paragraph 1 (d) of the Statute of the International Court of Justice, which proposal is annexed to the report, on its long-term programme of work. This is based on a proposal by **Mr. Charles Jalloh** of Sierra Leone. We consider, like the Commission, that this topic has fulfilled all the relevant criteria set out in 1996. We note that this is a classical topic for the Commission and would continue its known contributions clarifying the sources of international law. We therefore call for its inclusion in the current program of work as soon as possible. We note, in this regard, the only African led topic on peremptory norms of general international law will conclude next year along with protection of the environment in relation to armed conflicts and the completion of two ILC topics this year and one in 2019.
9. On this note, Sierra Leone is pleased to remind Member States of the nomination of Professor Charles Jalloh for re-election to a second term on the International Law

Commission (2023-2027). We are further pleased that he was co-nominated by Republic of Chile and New Zealand, and endorsed by the African Union for the elections to be held this session on 12 November 2021 here in New York.

10. Professor Jalloh, whose record in only the first term in the Commission speaks for itself, has wide ranging practice experience and expertise in international law with special interest in international criminal law, international economic law, international environmental law, international human rights law, international humanitarian law and international treaty law. Since his election to the ILC for a first term in 2017, he has actively participated in the Commission's work, engaging on all the topics and volunteering to serve on all the *ad hoc* and permanent working groups and drafting committees. As part of this, he has been a contributor of two successful topic proposals for the long-term programme of work, and another concerning improvement to the ILC's transparency and working methods.
11. A renowned scholar and practitioner of international criminal law, Professor Jalloh's dedication to advancing the ILC's mandate of promoting the codification and progressive development of international law has been recognized by his peers who have twice elected him to leadership positions, serving with distinction, in the Bureau. He was Chair of the Drafting Committee for the historic 70th (2018) session. He was subsequently elected as General Rapporteur for the ILC's 71st (2019) session. In his first term on the ILC, he has also sought to contribute towards strengthening the relationship between ILC

members and Sixth Committee delegates. Thus, in addition to speaking in many events here at the UN in New York and Geneva, he has assisted in co-convening various side events to enhance the dialogue on the ILC's work amongst States, academia, and civil society.

12. Given Professor Jalloh's recognized competence in international law, and his multiple contributions to the ILC's mandate during his first term, the Government of the Republic of Sierra Leone would highly appreciate the valuable support of Member States for the re-election of Professor Jalloh to a second term on the Commission.
13. In closing, **Madam Chair**, Sierra Leone uses this opportunity to highlight welcome progress on the non-legislative aspect of the work of the Commission. **First**, we congratulate Commission and **Professor Patrícia Galvão Teles** of Portugal on her appointment as the first ever female Chair of the Drafting Committee.
14. **Second**, Sierra Leone appreciates the dedication of the members of the Commission and the Secretariat, who despite the challenges of COVID-19, made the personal sacrifices which enabled the Commission to resume its work. We express our deep gratitude to the Swiss authorities for exceptionally lifting the pandemic travel and meeting restrictions for the members and Secretariat staff, thereby enabling hybrid meetings to take place. We recognize, from Chapter X of the report, that though the Commission made the hybrid format work in this exceptional COVID-19 situation, there remained significant challenges and disruptions to its deliberations and

established working methods. And third, we welcome the live webcast of the plenary meetings of the Commission, which in our view, has certainly improved accessibility to the work of the Commission. We look forward to the Commission making progress on gender advancement and accessibility to its work.

15. **I thank you.**