



**THE SOCIALIST REPUBLIC OF VIET NAM
PERMANENT MISSION TO THE UNITED NATIONS**

Statement

**by the Delegation of Viet Nam at the Sixth Committee
of the 76th Session of the General Assembly**

Agenda item 82: “Report of the International Law Commission”

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,

We thank Ambassador Mahmoud Hmoud, Chairman of the International Law Commission and the entire Commission for their tireless efforts in advancing the work of the Commission in the past year.

On the topic “**Protection of the atmosphere**”, our delegation appreciates the outstanding contribution of Professor Murase Shinya and the Commission in completing and adopting the set of guidelines on the protection of the atmosphere, together with commentaries thereto, on first reading.

The atmosphere plays an essential role in sustaining life on Earth, human health and welfare, and the ecosystems. Protection of the atmosphere is an issue of common concern to the international community as a whole, including Viet Nam.

My Delegation has followed this topic with keen interest. We would like to make the following observations.

First, we wish to register our regret that the Guidelines exclude from its scope of application the question of transfer of fund and technology, including intellectual properties, to developing countries. This principle is one of the fundamental and overriding principles in international environmental law and international law relating to the protection of the atmosphere. Given this exclusion is meant to comply with 2013 Understanding, my Delegation takes the view that, in such an important subject, the Commission should not confine itself to this Understanding. Excluding the fundamental principle of transfer of fund and

technology from the scope of application of this topic is without a reasonable basis. It risks rendering the Guidelines incomplete and a setback from contemporary international environmental law.

Second, we further note that Guideline 11, paragraph 2, subparagraph (a) provides for “facilitative procedures” by providing “assistance” to the States concerned in case of “non-compliance”. Though the Guidelines and commentaries thereto do not elaborate on the forms of assistance, such assistance might include technology transfer and other form of financial assistance and capacity building. This is in recognition of the capacity challenges that developing countries might face in the discharge of applicable obligations relating to environmental protection. However, this approach to post-non-compliance assistance might be inadequate and ineffective in protecting the atmosphere from pollution and degradation. Accordingly, assistance might be provided after non-compliance has taken place and damages to the atmosphere have been incurred. Whereas, assistance would be most effective if it aims at enhancing the capacity of the states to comply with their obligations in the first place, therefore preventing atmospheric pollution, degradation and other damages.

Finally, we consider the Guidelines of non-binding nature and not intended to create any legally binding obligations on Member States.

Turning to the topic “**Provisional application of treaties**”, my Delegations hails the efforts of the Special Rapporteur Ambassador Juan Manuel Gómez Robledo in advancing the project to develop a draft guide to provisional application of treaties.

Article 25 of the Vienna Convention on the Law of Treaties provides the general rule of international law regarding provisional application of treaties. Yet, there has not been detailed guidance as to the law and state practice in this aspect. With this project, the Commission has conducted a careful, rigorous study of state practice. The Guide is expected to contribute meaningfully to addressing certain practical challenges in the provisional application of treaties.

We concur with the views by other delegations that provisional application of treaties serve several practical and useful purposes. It allows for certain or some provisions of a treaty to have immediate effect prior to the completion of internal procedures or international requirements for its entry into force. Such might include bilateral agreements on visa exemption, consular affairs or multilateral

agreements such as free trade area agreements. In these cases, provisional application of these agreements could contribute to promoting application of the treaties and furthering international cooperation.

It must, however, be emphasized that, the completion and adoption of the Guide requires thorough examination and great caution. The agreement and/or acceptance of States and international organisations to apply a treaty provisionally must always be secured. In this regard, we encourage the ILC to carefully consider all comments by States and international organisations in completing this project.

Finally, though the Guide does not intend to create a presumption in favour of resorting to provisional application of treaties, we hope that with its adoption, provisional application of treaties will become a more popular practice and promote good faith cooperation among states.

I thank you, Madam Chair.