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**Statement by Amb. Jongin Bae (Deputy Permanent Representative)**

**Permanent Mission of the Republic of Korea to the United Nations**

**Report of the International Law Commission on the work of its seventy-second session (Agenda 82)**

**Sixth Committee, 76<sup>th</sup> session of UNGA**

**New York**

**Cluster 1: Protection of the atmosphere / Provisional application of treaties / Other Decision**

Thank you, Madam Chair,

First of all, my delegation would like to take this opportunity to express our appreciation to the ILC for its comprehensive report. Also, my delegation thanks the Commission for its efforts to achieve impressive progress on its work during this pandemic.

Madam Chair,

My delegation would like to express our sincere appreciation to the ILC and welcomes the adoption of the Draft Guidelines on the **Protection of the Atmosphere** comprising a Preamble and 12 Guidelines, as well as Commentaries. My delegation would like also to convey our deep gratitude to Special Rapporteur Mr. Shinya Murase for his outstanding work. Indeed, our heartfelt thanks go to all the ILC members for the fruitful results achieved. The Korean Government firmly believes that these guidelines can indeed prove useful, playing a meaningful role for the protection of the environment on the path ahead. Therefore, my delegation supports the recommendation of the Commission to the General Assembly taking note in a resolution of the Draft Guidelines on the Protection of the Atmosphere, annexing the Draft Guidelines to the resolution, and ensuring their widest possible dissemination.

My delegation recalls our previous statement at the 73<sup>rd</sup> Session of the General Assembly that the Draft Guidelines should not interfere with relevant political negotiations on other environmental issues, and that they also do not seek to fill gaps in existing treaty regimes. My delegation welcomes the decision of the Commission to keep the relevant paragraph in the Preamble with some elaboration, preserving the nature of this document as a “guideline”, containing both explanations of the existing international legal framework on this issue, as well as recommendations aimed at facilitating and promoting future-oriented cooperation among States. The nature of these Draft Guidelines is illustrated by Draft Guideline 10, which refers to “obligations under international law” in paragraph 1, and “recommendations” in paragraph 2 as separate concepts.

In this regard, my delegation takes note of the decision of the Commission not to add “Failure to implement the obligations amounting to breach thereof entails the responsibility of States under international law” as a paragraph 2 of the Draft Guideline 10. The Korean Government regards it as inappropriate and unnecessary to refer to the issue of responsibility of States as this is beyond the scope of this topic.

Madam Chair,

I would now like to make a few comments on the text of the Draft Guidelines, particularly in light of the modifications to its text adopted at this year’s Session of the Commission.

First, our delegation supports the decision of the Commission to adopt the wording “common concern of humankind” to characterize the atmosphere, a term in line with existing international treaties, such as the 1992 United Nations Framework Convention on Climate Change, and Preamble to the 2015 Paris Agreement on climate change. My delegation notes that the commentary on the preamble of the draft guidelines states that the notion “common concern of humankind” identifies a problem that “requires cooperation from the entire international community.” At the same time, my delegation supports the comment made by the Commission that such a concept does not necessarily entail the creation of rights or obligations *erga omnes*.

Second, my delegation notes that the word “significant” has been added to the definition of “atmospheric pollution” in Draft Guideline 1. The Korean government sees merit in such an addition, in particular given that relevant jurisprudence, such as the judgment of the International Court of Justice in the *Certain Activities and Construction of a Road along the San Juan River* case between Nicaragua and Costa Rica, refer to the obligation in general international law to exercise due diligence in preventing significant transboundary harm. My delegation believes, however, that this addition should not be construed as prejudicing the meaning and scope of any of the obligations under general international law as explained by the Draft Guidelines.

Madam Chair,

Turning to the topic of “**provisional application of treaties**”, the Korean delegation would like to express its sincere appreciation to Special Rapporteur Mr. Juan Manuel Gomez Robledo for his contribution in preparing the draft guidelines on “Provisional Application of Treaties”.

My delegation also extends our gratitude to members of the Commission who achieved great results in elaborating the draft guidelines and welcomes the adoption of the entire second reading draft of “the Guide to Provisional Application of Treaties”, which will serve as a useful reference for Member States.

Regarding the form of agreement, my delegation takes note with appreciation that the phrase “in accordance with the rules of such organization or conference, reflecting the agreement of the States or international organizations concerned” has been added to draft Guideline 4 (b) (i). This makes it clear that the means for expressing agreement to provisional application of a treaty should comply with the rules of the organization or the conference.

Moreover, regarding draft Guideline 7, my delegation recognizes the insufficient practices in expressing reservation on provisional application of a treaty or a part of a treaty. However, there is no reason not to accept the reservation system for provisional application, unless otherwise provided in the treaty or agreed upon by the parties. Thus,

my delegation supports the cautious approach in the current wording, especially the “without prejudice to” part.

The Korean delegation believes that the Commission’s study on the topic will contribute to the development of international law.

Madam Chair,

The Korean government welcomes the decision of the Commission to include the topic “subsidiary means for the determination of rules of international law” in its long-term Programme of Work. Indeed, it is our sincere hope that the work of the Commission on this topic serves to shed light on the important yet subtle issue of the role of judicial decisions and scholarly works in identifying international legal norms. My delegation would like to ask the Commission, when it brings this item into consideration, to accord its deepest consideration to what implications this topic might have on international relations, and how discussions on this topic might benefit States.

Madam Chair,

My delegation would like to recall that the Republic of Korea presented the candidature of Professor Lee Keun-Gwan, a distinguished international law scholar for nearly thirty years, for election to the ILC to be held on November 12. In this regard, the Republic of Korea kindly requests the invaluable support of the UN Member States for Professor Lee’s candidacy at the upcoming election.

Thank you, Madam Chair.