

STATEMENT BY

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ON

AGENDA ITEM 82

**CLUSTER II & III – REPORT OF THE INTERNATIONAL LAW
COMMISSION ON THE WORK OF ITS SEVENTIETH SESSION**

AT THE

SIXTH COMMITTEE OF THE 73rd SESSION OF THE

UNITED NATIONS GENERAL ASSEMBLY

26 OCTOBER 2018

Mr. Chairman,

In today's Statement, our focus would be on the Peremptory norms of general international law (*jus cogens*); Protection of the atmosphere; and Immunity of state officials from foreign criminal jurisdiction.

Mr. Chairman,

Starting with the topic ‘Peremptory norms of general international law (*jus cogens*), we would like to commend the Special Rapporteur, Mr. Dire Tladi for his third report on the topic. It essentially considered the consequences and legal effects of the topic by taking into account the earlier works of the

Commission and the relevant provisions of the Vienna Convention on the Law of Treaties. The third report proposed 13 draft Conclusions, which have been provisionally adopted by the Commission.

The proposed draft Conclusion 14 recommended for a compulsory dispute settlement procedure through ICJ in the case of conflict between a treaty and a *jus cogens* norm. Although, the submission of a dispute to the ICJ is subject to the jurisdictional principles of the ICJ, we feel it however necessary that the issue may also be analysed in the light of concerns of some members in negotiating Article 66 of the Vienna Convention on the Law of Treaties wherein, it had provided for all means of dispute settlement, not restricting to the ICJ alone.

Mr. Chairman,

Draft Conclusion 17 refers to invalidity of binding resolutions of international organizations, including the Security Council resolutions. We feel that the Commission is required to study in detail and analyse its impact in terms of action taken under Chapter VII of the UN Charter and the application of Article 103 of the UN Charter. This would provide greater clarity on the issue of whether a Charter obligation overrides an obligation that represents a *jus cogens norm*. So, while we appreciate the furthering of work on the topic, given the sensitivity attached to the nature of the topic, the Commission is expected to have extensive analytical debate on the conclusions.

Mr. Chairman,

Turning to the topic 'Protection of the atmosphere', we commend Special Rapporteur Mr. Shinya Murase for submitting the fifth Report. The report indicates that it addresses the question of the implementation of the draft guidelines, the question of compliance through the cooperative compliance mechanism over the punitive and enforcement mechanisms, and the question of dispute settlement in three new guidelines 10, 11, and 12 respectively.

Mr. Chairman,

While, we like the suggestion of cooperative mechanisms, this is however our understanding that the guidelines, when finally adopted, would be available as a material to be followed and used to the suitability of conditions and willingness of States, and not to be implemented, as such, as the treaty provisions.

We understand that the obligations under international law referred to in the guidelines would mean for a State those agreed in an international instrument and to which that State is a party. Meaning thereby, the guidelines are not creating the binding international law themselves. Further Mr. Chairman similarly, the disputes should also refer to those that may arise under the international instrument to which the States concerned are a party. In fact, such international instrument itself would have provisions on procedure for the settlement of disputes.

To understand in summary, the guidelines should work as a reminder to States about their obligations towards the protection of the atmosphere and to carry them out in accordance with the procedure envisaged in the relevant international instrument.

Turning to the topic “Immunity of State Officials from foreign criminal jurisdiction”, we have taken note of the sixth report submitted by the Special Rapporteur, which relate to the procedural aspects of immunity and would continue in the next session of the Commission. Mr. Chairman, we prefer the examination of immunity perspective as a concept, without linking the same to the questions of immunity in reference to the International Criminal Court.

Further Mr. Chairman, draft article 7 has been adopted only provisionally by a method of vote which method is not dear to a number of delegations including ours in the context of Commission’s work. Therefore, we consider it ideal that in the process of final adoption of this article, the views of all members of the Commission be taken into account in an attempt to achieve consensus.

I thank you Mr. Chairman.