



PERMANENT MISSION OF GREECE TO THE UNITED NATIONS
866 SECOND AVENUE · NEW YORK, NY 10017-2905
Tel: 212-888-6900 Fax: 212-888-4440
e-mail: grdel.un@mfa.gr

Chapter VI : Protection of the atmosphere

Mr. Chairman,

On the topic "Protection of the atmosphere" I would like to use this opportunity to commend the Special Rapporteur, Mr. Shinya Murase, for the high quality of his fourth Report. His work, based upon an exhaustive study of relevant practice, case-law and scholarly writings, enables the Commission to provide international lawyers with mostly needed normative guidance in this rapidly evolving field of international law.

While fully aligning with the statement of the European Union on this matter, we would like to make the following additional observations:

Draft Guideline 9 (as adopted by the Commission) which addresses the issue of interlinkages and synergies between rules of international law on the protection of the atmosphere and other relevant rules of international law, provides, in our view, thoughtful guidance on the matter. Drawing on the conclusions reached in 2006 by the Commission's Study Group on fragmentation in international law, it aims to ensure compatibility and complementarity among rules on the protection of the atmosphere and rules stemming from other branches of international law such as trade and investment law, the law of the sea and human rights law, so that States can abide by both without the fear of conflicting obligations, notwithstanding any difference in respect of their provenance and regulatory subject matter.

As indicated in the Special Rapporteur's report, environmental considerations have progressively made their way into the above mentioned branches of international law, either through the proclamation of new principles or through an evolutionary interpretation of existing rules by judicial and quasi-judicial bodies, thus facilitating the trend, conveyed also through Draft Guideline 9, towards harmonization and mutual supportiveness.

It is to be expected that this growing interaction will speed up in the future and Draft Guideline 9, through its framework nature and open-ended wording, provides enough

annual UN General Assembly resolutions on oceans and the law of the sea, the last one being GA Resolution 71/257. It should be recalled that when the Commission decided to include this topic in its programme of work, reached an understanding, which among others underlines that “ (d) The outcome of the work on the topic will be draft

guidelines that do not seek to impose on current treaty regimes legal rules or legal principles not already contained therein. The Special Rapporteur’s reports would be based on such understanding.”¹

This being so we are of the view that the Commission should be very cautious to include in its future programme of work topics that are related to the Law of the Sea issues.

Chapter VII: Immunity of State officials from foreign criminal jurisdiction

Mr. Chairman,

With regard to the topic “Immunities of State officials from foreign criminal jurisdiction” and, in particular, the highly sensitive issue of exceptions to immunity *ratione materiae*, we would like to make the following observations:

In our intervention last year, while acknowledging the inherent difficulties of the issue and the dilemmas which might arise, we called on the Commission not to miss the

types of habeas corpus by including in Draft Article 7 certain crimes under international law in

relation to which immunity *ratione materiae* shall not apply.

Mr. Chairman,

As we stated last year, we firmly believe that in contemporary international law, the rules on immunity should strike a balance between on the one hand the respect for the

sovereign equality of States and the stability of international relations and, on the other

initially proposed by the Special Rapporteur which, as rightly pointed out by the Drafting Committee, if they were to be included, ought to apply to the Draft Articles as a whole.

Chapter VIII: Peremptory Norms of General International Law

Mr. Chairman,

On the topic of peremptory norms of general international law (*jus cogens*), allow me first of all to express our gratitude to the Special Rapporteur, Mr. Dire Tladic, for the two reports produced by him on this subject. These reports, together with the draft conclusions provisionally adopted so far by the Drafting Committee, have paved the way for a pragmatic approach to the subject, based on the elements of *jus cogens* set out in article 53 of the 1969 Vienna Convention, which is widely accepted as providing an adequate definition of the latter, applying also beyond the law of treaties.

Greece also welcomes the pivotal importance recognized by the Special Rapporteur and the Commission to the acceptance and recognition by States of the peremptory character of a norm as a prerequisite for it to qualify as a *jus cogens* norm. The latter, as it

For the above reasons, the Commission should provide guidance on the meaning of

general international law. The definition contained in paragraph 1 of draft principle 5 proposed by the Special Rapporteur, which was not retained by the Drafting Committee, could, if further elaborated and fine-tuned, provide a useful starting point in this regard.

With respect to the criteria for the identification of peremptory norms of international law provided in draft conclusion 4, we are of the view that the Commission

should consider adding another one, that is for a norm to qualify as part of *jus cogens* it

I will last address the topic of the succession of States with respect to State responsibility. Allow me to use this opportunity to commend the Special Rapporteur, Mr. Pavel Šturma for his first Report. As relevant State practice is not abundant in this area, the

relevant gaps and engage, to a considerable extent, in progressive development of international law. We are confident that the Commission's work will provide international lawyers with normative guidance in dealing with this thorny issue. Greece is looking forward to the future work of the Special Rapporteur and of the Commission and will provide its comments accordingly.

Turning to draft articles 3 and 4 proposed by the Special Rapporteur in his first report, allow me to stress, that there is, in our view, a major difference between those two provisions and the corresponding provisions of articles 8 and 9 of the 1979 Vienna Convention on State succession with respect to treaties. In the case of State succession to a treaty, the *vinculum iuris* between the third State and the predecessor State remains in

parallel with the new one between the third State and the successor State, with the

unliquidated damages may be of help in cases where an international court has issued against the predecessor State, before the date of succession, an award providing not for compensation but for more complicated forms of reparation, such as the annulment of an illegal act in the context of an order of *restitutio in integrum*³.

I thank you mr. Chairman