



United Kingdom Mission  
to the United Nations

One Dag Hammarskjold Plaza  
(885 Second Avenue)  
New York, NY 10017

Tel: +1 (212) 745 9200  
Fax: +1 (212) 745 9316

Email: [uk@un.int](mailto:uk@un.int)  
[http://twitter.com/UKUN\\_NewYork](http://twitter.com/UKUN_NewYork)

# UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,  
SEVENTY-THIRD SESSION, AGENDA ITEM 82  
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK  
OF ITS 70TH SESSION: PART 2 (A/73/10)

CHAPTER VI (PROTECTION OF THE ATMOSPHERE)  
CHAPTER VII (PROVISIONAL APPLICATION OF TREATIES)  
CHAPTER VIII (PEREMPTORY NORMS OF GENERAL INTERNATIONAL  
LAW (JUS COGENS))

STATEMENT BY DR. ELAINE GORASIA  
ASSISTANT LEGAL ADVISER  
FOREIGN & COMMONWEALTH OFFICE

**24 – 26 OCTOBER 2018**

Check against delivery

Mr/Madam Chairperson,

1. The United Kingdom welcomes the completion of the first reading of a set of draft guidelines on the topic **Protection of the atmosphere**. We shall send written comments in due course. We express our appreciation to Mr Murase for his work and are grateful to the Commission for its careful consideration of this topic.
2. We read with interest the fifth report of the Special Rapporteur, Mr Shinya Murase, which included proposals for three additional draft guidelines concerning implementation (draft guideline 10), compliance (draft guideline 11) and dispute settlement (draft guideline 12).
3. The United Kingdom recalls the doubts it has expressed in previous sessions about the utility of the Commission's work on this topic and continues to emphasise the significance of existing international obligations concerning protection of the environment that already address many of the issues concerning protection of the atmosphere.
4. In addition, we note the relevance of existing agreements for addressing new challenges as they have arisen. One example is the Montreal Protocol on Substances that Deplete the Ozone Layer, the scope of which was recently extended to include greenhouse gases, thereby evincing the flexibility inherent in the existing international legal framework to tailor legal norms to evolving global challenges in a manner which is nuanced and context-specific.
5. The United Kingdom continues to be concerned about the ambiguity of draft guideline 9 on the interrelationship with other obligations in international law. With regard to the three draft guidelines adopted by the Commission this year, it is difficult to see what value these add. While implementation may be widely encouraged, the guidelines nevertheless do not address fundamental barriers to effective



legally binding obligation to apply the treaty or part thereof as if the treaty were in force” does not imply that provisional application has the same legal effect as entry into force.” It would be helpful if the Commission could explain in a little more detail, if possible with examples, in what ways a provisionally applied treaty is “not subject to



conclusions 8 to 14) as well as comments on some of the draft conclusions in the third report that have been debated in the Commission and referred to the Drafting Committee (but which have not yet emerged from the Committee) (draft conclusions 10(1) and 15-23). We are aware that it may be a little premature to be commenting on draft provisions that have yet to be adopted by the Commission itself, with commentaries. But, given the procedure adopted by the Commission this seems the most practical approach to get our views across in a timely way. I do not, therefore, intend to set these out in my oral statement today; instead the annex should be seen as the formal position of the United Kingdom on the draft conclusions concerned.

Thank you, Mr/Madam Chairperson,

\*\*\*

Annex to United Kingdom statement on the topic of **Peremptory norms of general international law (*jus cogens*)**

1. In relation to the conclusions provisionally adopted by the Drafting Committee in 2018 on the effects of *jus cogens* on treaties, the United Kingdom is of the view that where conclusions are based on the provisions of the Vienna Convention on the Law of Treaties they should follow the language of such provisions. The United Kingdom is concerned about proposed departures from the safeguards enshrined in the VCLT and reserves the right to provide further comments in this regard as the topic develops.
2. Draft conclusion 14 deals with a very important matter, the procedure to be applied when a State invokes a norm of *jus cogens* and another State challenges that invocation. The solution found in the Vienna Convention was a crucial element for the acceptance of the provisions on *jus cogens*. We read with great interest the Special Rapporteur's







*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* that immunities were a question of jurisdiction whereas the question of whether there has been a breach of *jus cogens* is one of substance.

7. In relation to the effects of *jus cogens* on state responsibility detailed in draft conclusions 19, 20 and 21, the United Kingdom has general concerns about the reliance by the Special Rapporteur on the non-binding articles on state responsibility, not all of which represent settled