

34. At its 3529th meeting, held on 27 May 2021, the Commission considered the report of the Drafting Committee (A/CN.4/L.951), and adopted the draft guidelines, together with a preamble, on the protection of the atmosphere on second reading (see sect. E.1 below).

35. At its 3549th to 3554th meetings, held from 26 to 29 July 2021, the Commission adopted the commentaries to the draft guidelines and the preamble (see sect. E.2 below).

36. In accordance with its statute, the Commission submits the draft guidelines, together with the preamble, to the General Assembly, with the recommendation set out below (see sect. C below).

C. Recommendation of the Commission

37. At its 3554th meeting, held on 29 July 2021, the Commission decided, in accordance with article 23 of its statute, to recommend that the General Assembly:

(a) take note in a resolution of the draft preamble and guidelines on the protection of the atmosphere, annex the draft guidelines to the resolution, and ensure their widest possible dissemination;

(b) commend the draft preamble and guidelines, together with the commentaries thereto, to the attention of States, international organizations and all who may be called upon to deal with the subject.

D. Tribute to the Special Rapporteur

38. At its 3554th meeting, held on 29 July 2021, the Commission, after adopting the draft guidelines on the protection of the atmosphere, adopted the following resolution by acclamation:

“The International Law Commission,

Having adopted the draft guidelines on the protection of the atmosphere,

Expresses to the Special Rapporteur, Mr. Shinya Murase, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the draft guidelines through his tireless efforts and devoted work, and for the results achieved in the elaboration of the draft guidelines on the protection of the atmosphere.”

E. Text of the draft guidelines on the protection of the atmosphere

1. Text of the draft guidelines

39. The text of the draft guidelines, adopted by the Commission on second reading, at the seventy-second session is reproduced below.

Protection of the atmosphere

Preamble

Acknowledging that the atmosphere is a natural resource, with a limited assimilation capacity, essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems,

Bearing in mind that the transport and dispersion of polluting and degrading substances occur within the atmosphere,

Considering that atmospheric pollution and atmospheric degradation are a common concern of humankind,

Aware of the special situation and needs of developing countries,

Noting the close interaction between the atmosphere and the oceans,

Noting in particular the special situation of low-lying coastal areas and small island developing States due to sea-level rise,

Recognizing that the interests of future generations of humankind in the long-term conservation of the quality of the atmosphere should be fully taken into account,

Recalling that the present draft guidelines were elaborated on the understanding that they were not intended to interfere with relevant political negotiations or to impose on current treaty regimes rules or principles not already contained therein,

Guideline 1

Use of terms

For the purposes of the present draft guidelines:

- (a) "atmosphere" means the envelope of gases surrounding the Earth;
- (b) "atmospheric pollution" means the introduction or release by humans, directly or indirectly, into the atmosphere of substances or energy contributing to significant deleterious effects extending beyond the State of origin of such a nature as to endanger human life and health and the Earth's natural environment;
- (c) "atmospheric degradation" means the alteration by humans, directly or indirectly, of atmospheric conditions having significant deleterious effects of such a nature as to endanger human life and health and the Earth's natural environment.

Guideline 2

Scope

1. The present draft guidelines concern the protection of the atmosphere from atmospheric pollution and atmospheric degradation.
2. The present draft guidelines do not deal with and are without prejudice to questions concerning the polluter-pays principle, the precautionary principle and the common but differentiated responsibilities principle.
3. Nothing in the present draft guidelines affects the status of airspace under international law nor questions related to outer space, including its delimitation.

Guideline 3

Obligation to protect the atmosphere

States have the obligation to protect the atmosphere by exercising due diligence in taking appropriate measures, in accordance with applicable rules of international law, to prevent, reduce or control atmospheric pollution and atmospheric degradation.

Guideline 4

Environmental impact assessment

States have the obligation to ensure that an environmental impact assessment is undertaken of proposed activities under their jurisdiction or control which are likely to cause significant adverse impact on the atmosphere in terms of atmospheric pollution or atmospheric degradation.

Guideline 5

Sustainable utilization of the atmosphere

1. Given that the atmosphere is a natural resource with a limited assimilation capacity, its utilization should be undertaken in a sustainable manner.
2. Sustainable utilization of the atmosphere includes the need to reconcile economic development with the protection of the atmosphere.

Guideline 6

Equitable and reasonable utilization of the atmosphere

The atmosphere should be utilized in an equitable and reasonable manner, taking fully into account the interests of present and future generations.

Guideline 7**Intentional large-scale modification of the atmosphere**

Activities aimed at intentional large-scale modification of the atmosphere should only be conducted with prudence and caution, and subject to any applicable rules of international law, including those relating to environmental impact assessment.

Guideline 8**International cooperation**

1. States have the obligation to cooperate, as appropriate, with each other and with relevant international organizations for the protection of the atmosphere from atmospheric pollution and atmospheric degradation.
2. States should cooperate in further enhancing scientific and technical knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation. Cooperation could include exchange of information and joint monitoring.

Guideline 9**Interrelationship among relevant rules**

1. The rules of international law relating to the protection of the atmosphere and other relevant rules of international law, including, *inter alia*, the rules of international trade and investment law, of the law of the sea and of international human rights law, should, to the extent possible, be identified, interpreted and applied in order to give rise to a single set of compatible obligations, in line with the principles of harmonization and systemic integration, and with a view to avoiding conflicts. This should be done in accordance with the relevant rules set forth in the Vienna Convention on the Law of Treaties, including articles 30 and 31, paragraph 3 (c), and the principles and rules of customary international law.
2. States should, to the extent possible, when developing new rules of international law relating to the protection of the atmosphere and other relevant rules of international law, endeavour to do so in a harmonious manner.
3. When applying paragraphs 1 and 2, special consideration should be given to persons and groups particularly vulnerable to atmospheric pollution and atmospheric degradation. Such groups may include, *inter alia*, indigenous peoples, people of the least developed countries and people of low-lying coastal areas and small island developing States affected by sea-level rise.

Guideline 10**Implementation**

1. National implementation of obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation, including those referred to in the present draft guidelines, may take the form of legislative, administrative, judicial and other actions.
2. States should endeavour to give effect to the recommendations contained in the present draft guidelines.

Guideline 11**Compliance**

1. States are required to abide by their obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation in good faith, including through compliance with the rules and procedures in the relevant agreements to which they are parties.
2. To achieve compliance, facilitative or enforcement procedures may be used as appropriate, in accordance with the relevant agreements:
 - (a) facilitative procedures may include providing assistance to States, in cases of non-compliance, in a transparent, non-adversarial and non-punitive manner to ensure that the States concerned comply with their obligations under international law, taking into account their capabilities and special conditions;

(b) enforcement procedures may include issuing a caution of non-compliance, termination of rights and privileges under the relevant agreements, and other forms of enforcement measures.

Guideline 12

Dispute settlement

1. Disputes between States relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation are to be settled by peaceful means.
2. Since such disputes may be of a fact-intensive and science-dependent character, due consideration should be given to the use of scientific and technical experts.

2. Text of the draft guidelines and commentaries thereto

40. The text of the draft guidelines and commentaries thereto, adopted by the Commission on second reading, is reproduced below.

Protection of the atmosphere

General commentary

(1) As is always the case with the Commission's output, the draft guidelines are to be read together with the commentaries.

(2) The Commission recognizes the importance of being fully engaged with the international community's present-day needs. It is acknowledged that both the human and natural environments can be adversely affected by certain changes in the condition of the atmosphere mainly caused by the introduction of harmful substances or energy, causing transboundary air pollution, ozone depletion, as well as changes in the atmospheric conditions leading to climate change. The Commission seeks, through the progressive development of international law and its codification, to provide guidelines that may assist the international community as it addresses critical questions relating to transboundary and global protection of the atmosphere. In doing so, the Commission, based on the 2013 understanding,⁹ does not desire to interfere with relevant political negotiations or to impose on current treaty regimes rules or principles not already contained therein.

Preamble

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Bearing in mind that the transport and dispersion of polluting and degrading substances occur within the atmosphere,

Considering that atmospheric pollution and atmospheric degradation are a common concern of humankind,

Aware of the special situation and needs of developing countries,

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Recognizing that the interests of future generations of humankind in the long-term conservation of the quality of the atmosphere should be fully taken into account,

Recalling that the present draft guidelines were elaborated on the understanding that they were not intended to interfere with relevant political negotiations or to impose on current treaty regimes rules or principles not already contained therein,

⁹ See footnote 6 above.