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PROTECTION OF THE ATMOSPHERE

Statement of the Chairman of the Drafting Committee,

Mr. Pavel Šturma

4 July 2016

Mr. Chairman,

I am pleased today to present the fifth report of the Drafting Committee for the sixty-eighth session of the Commission, addressing, this time, the topic "Protection of the atmosphere". The report is contained in document, A/CN.4/L.875. It has a preambular paragraph and 5 draft guidelines.

At the current session, the Drafting Committee devoted 5 meetings – the 23rd to to 27th meetings, on 7, 8 and 9 June 2016, – to the consideration of the draft guidelines and a preambular paragraph referred to it by the Commission on 7 June 2016.

Before I address the details of the draft guidelines provisionally adopted, I should like to pay tribute to the Special Rapporteur, Mr. Shinya Murase, whose mastery

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of the subject, constructive spirit and cooperation greatly facilitated the work of the Drafting Committee and made my task, as Chair, less difficult. I am also most grateful to the members of the Drafting Committee for their active participation and valuable contributions to the successful outcome. I would also wish to thank the Secretariat for its invaluable assistance. And, as always, the interpreters have continued to perform, behind the scene, a challenging task for the Drafting Committee.

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Mr. Chairman,

At its 3311th meeting, on 7 June 2016, upon the completion of its debate on the topic, the Commission decided to refer draft guidelines 3, 4, 5, 6 and 7, together with a proposal for an additional preambular paragraph, as contained in the Special Rapporteur's third report (A/CN.4/692) to the Drafting Committee. It is to be remembered that the Special Rapporteur, in his summing up of the debate, suggested some reformulations of the proposed draft guidelines and preambular paragraphs, taking into account the various comments made in plenary. Accordingly, the Drafting Committee also had before it a working paper containing the adjusted proposals made by the Special Rapporteur.

It bears recalling that the Drafting Committee is elaborating draft "guidelines" for the present topic in line with the 2013 Understanding. The Drafting Committee has left open the question whether the "guidelines" will be presented as containing "guiding principles relating to" or to "deal with" the protection of the atmosphere.

It will be further recalled that last year, on the recommendation of the Drafting Committee, the Commission adopted 3 draft guidelines, namely draft guidelines 1, 2 and 5, together with four preambular paragraphs. Following the proposal of the Special Rapporteur in his third report, the Drafting Committee has renumbered draft guideline 5, on International Cooperation, as draft guideline 8, and the title appears as such in the present report of the Drafting Committee. The number 5 in square brackets denotes the previous number. The text of that guideline remains as previously adopted last year.

Moreover, the Drafting Committee has adopted draft guidelines 3, 4, 5, 6 and 7, together with a preambular paragraph, which is based on the proposal by the Special Rapporteur in his third report. The preambular paragraph will appear in the text of preambular paragraphs adopted thus far, as the fourth preambular paragraph.

In my introduction of the report of the Drafting Committee, I will begin with draft guideline 3.

Draft guideline 3: Obligation to protect the atmosphere

This draft guideline is central to the whole scheme of the draft guidelines. Draft guidelines 4, 5 and 6, which were also adopted at the current session, flow from this guideline, seeking in particular to relate, analogously, various principles of international environmental law to the specific situation of the protection of the atmosphere.

It will be recalled that last year, the Special Rapporteur proposed in his second report (A/CN.4/681) a draft guideline whose referral, following debate last year in the plenary, to the Drafting Committee was deferred pending further consideration and analysis by the Special Rapporteur. This was done taking into account the comments made in the plenary, not least the criticism that characterization by the Special Rapporteur that the duty to protect as an obligation *erga omnes* had not been fully substantiated in the second report. The proposal that was submitted by the Special Rapporteur in his third report (A/CN.4/.692) sought to allay that concern by seeking to delimit the seemingly broad scope of the obligation specifically to atmospheric pollution and atmospheric degradation and differentiating the kinds of obligations pertaining to the two dimensions, while refraining from making a determination whether or not a duty to prevent in respect of protection of the atmosphere was an obligation *erga omnes*.

The Drafting Committee proceeded on the basis of a revised proposal by the Special Rapporteur, which sought to take into account comments in the plenary, in particular the need to better link the chapeau of the proposed draft guideline and the two paragraphs dealing respectively with atmospheric pollution and atmospheric degradation.

This has been achieved by having a single paragraph.

As presently formulated, the draft guideline provides that States have an 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. This formulation finds its genesis in principle 21 of the Stockholm Declaration on the Human Environment, channeling the *Trail Smelter Arbitration*. This is further reflected in principle 2 of the Rio Declaration on Environment and Development.

The reference to "States" for the purposes of the draft guideline denotes both the possibility of States acting "individually" or "jointly", as appropriate.

It will be recalled that draft guideline 1, provisionally adopted last year, already defines atmospheric pollution as the introduction or release by humans, directly or indirectly, into the atmosphere of substances contributing to 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. This definition already contains a "transboundary" element. Moreover, in defining atmospheric degradation as "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" there is already a "global" dimension. Accordingly, the Drafting Committee decided to suppress the reference to "transboundary" and "global" from the draft guideline proposed by the Special Rapporteur.

As presently formulated, the draft guideline is without prejudice to whether or not the obligation to protect the atmosphere is an *erga omnes* obligation. This point will be reflected upon in the commentary. The duty of due diligence as an obligation of conduct and not result is one that will be clarified in the commentary. It requires States to take appropriate measures to control public and private conduct. Due diligence implies a duty of vigilance and prevention. It also requires taking into account the context and evolving standards, from a regulatory or technological viewpoint.

The Commission has already acknowledged the fluctuating and dynamic character of the atmosphere. This results in the transport and dispersion of polluting and degrading substance to occur within it. Moreover, the atmosphere is essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems. It was on this basis that one of the preambular paragraphs that the Commission provisionally adopted last year states as a factual matter that the "protection of the environment from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole".

Accordingly, the reference to "prevent, reduce or control" denotes a variety of measures that could be taken by States, whether individually or jointly, in accordance with applicable rules as may be relevant to atmospheric pollution on the one hand and atmospheric degradation on the other. The phrase "prevent, reduce or control" draws upon formulations contained in the United Nations Law of the Sea Convention (article 194) and the United Nations Framework Convention on Climate Change (article 4). Moreover, the Paris Agreement talks about holding the global average temperature to certain agreed levels, recognizing that this "would significantly reduce the risks and impacts of climate change", "increasing the ability to adapt to adverse impacts of climate change" and "foster[ing] climate resilience and low greenhouse emissions development" (article 2).

Even though the appropriate measures to "prevent, reduce or control" apply to both atmospheric pollution and atmospheric degradation, it is understood that the reference to "applicable rules of international law" is intended to signal a distinction between measures taken, bearing in mind the transboundary nature of atmospheric pollution and the global nature of atmospheric degradation, and the different rules that are applicable in relation thereto. Different "applicable rules of international law" are implicated in each of the two situations and the contours of such applicable rules would be further explored in the commentary.

The title of the draft guideline "Obligation to protect the atmosphere" as opposed to "Obligation of States to protect the atmosphere" seeks to accentuate the centrality of the obligation to protect.

I now draw your attention to draft guideline 4.

Draft guideline 4: Environmental Impact Assessment

Draft guideline 4 deals with environmental impact assessment. This is the first of 3 guidelines that flow from the overarching draft guideline 3. In the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment of 16 December 2015*, para. 153*,* the International Court of Justice affirmed that "a State's obligation to exercise due diligence in preventing significant transboundary harm requires that State to ascertain whether there is a risk of significant transboundary harm prior to undertaking an activity having the potential adversely to affect the environment of another State."[1] As presently formulated, the draft guidelines provides that: "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."

Discussions in the Drafting Committee proceeded on the basis of a revised proposal by the Special Rapporteur, which sought to take into account views expressed in the plenary. The main points of discussion revolved around the still seemingly broad scope of the revised draft proposal. First, the draft guideline has been reformulated in the passive tense, "States have the obligation to ensure that an environmental impact assessment is undertaken...", as opposed to "States have an obligation to undertake an appropriate environmental impact assessment" to indicate that this is an obligation of conduct and that, given the broad nature of economic actors, the obligation does not necessarily attach to the State itself to perform the environmental impact assessment. What would be crucial for the State would be to put in place the necessary legislative, regulatory and other measures for an environmental impact assessment to be conducted

[1] See also *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua, Judgment of 16 December 2015.* at *http://www.icj-cij.org/docket/files/152/18848.pdf*.

with respect to proposed activities. Notification and consultations are key to an environmental impact assessment.

Secondly, there was a concern that the proposal was not limited in space. The phrase “of proposed activities under their jurisdiction or control” is intended to indicate that the obligation relating to States to ensure that an environmental impact assessment is undertaken in respect of activities under their jurisdiction or control. Since environmental threats have no respect for borders, in principle, this would not exclude the possibility of a group of States, as part of the global environmental governance, coming together and agreeing that an environmental impact assessment be conducted in respect of an activity under their jurisdiction or control or likely to have an impact over areas within their jurisdiction or control.

The third concern related to whether there was need for a threshold considering in particular that the definition of both “atmospheric pollution” and “atmospheric degradation” in guideline 1, provisionally adopted last year, already contains a threshold of some form. Such a threshold was considered necessary by the Drafting Committee, as the threshold for the current draft guidelines forms the basis for triggering the environmental impact assessment. The phrase “which are likely to cause significant adverse impact” draws on the language of article 17 of the Rio Declaration on Development and Environment. Moreover, there are other instruments such as the Espoo Convention on Environmental Impact Assessment in a Transboundary Context that use a similar threshold. The International Court of Justice has also, in several judgments, including the *Case concerning the Gabčíkovo-Nagymaros Project (Hungary* v. *Slovakia)* (*I.C.J. Reports* 1997*,* p. 7), the *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, (I.C.J. Reports* 2010, p. 14) and the *Construction of a Road in Costa Rica along the San Juan River,* alluded to the importance of an environmental impact assessment. In the *Pulp Mills* case the Court indicated that “it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource” (para. 204).

By having a threshold of “likely to cause significant impact”, the draft guideline excludes an environmental impact assessment for an activity whose impact is likely to be minor or transitory. The impact of the potential harm must be “significant” and given the fact that the topic covers both “atmospheric pollution” and “atmospheric degradation” what constitutes “significant” remains a factual determination. To ensure that the threshold of foreseeability is met before the obligation arises, the prior reference to “an appropriate environmental impact assessment” to be undertaken now omits the qualifier “an appropriate”.

While the phrase “in terms of atmospheric pollution or atmospheric degradation” was considered by the Drafting Committee, drafting wise, not to be entirely felicitous, it was viewed important that the draft guideline refers to the two main issues that the present draft guidelines are concerned with in respect of the protection of the environment, namely transboundary atmospheric pollution and atmospheric degradation. The commentary will elaborate further the extent to which the obligation to ensure that an environmental impact assessment is undertaken applies in transboundary and global contexts.

While the Drafting Committee acknowledged that transparency and public participation are important components aimed at ensuring access to information and representation, it considered that parts of the draft guideline as proposed by the Special Rapporteur dealing with procedural aspects of an environmental impact assessment be dealt with in the commentary.

Principle 10 of the Rio Declaration talks about the fact that environmental issues are best handled with participation of all concerned citizens, at the relevant levels. This includes access to information, the opportunity to participate in decision-making processes, and effective access to judicial and administrative proceedings. The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters addresses these issues.

Draft guideline 4 is entitled “Environmental Impact Assessment” as originally proposed by the Special Rapporteur.

I now move to draft guideline 5.

Draft guideline 5: Sustainable utilization of the atmosphere

Draft guideline 5 deals with sustainable utilization of the atmosphere. The atmosphere is a limited resource with limited assimilation capacity. It is often not conceived of as exploitable in the sense it is commonly understood that mineral or oil and gas resources are explored and exploited. In actuality, though, the atmosphere, in its physical and functional components, is exploited. The polluter exploits the atmosphere by reducing its quality and its capacity to assimilate pollutants. First and foremost, the draft guideline draws analogies from the concept of "shared resource", while also recognizing that the unity of the global atmosphere requires a recognition of the commonality of interests.

Accordingly, draft guideline 5 proceeds on the premise that the atmosphere is a limited resource whose ability to sustain life on Earth is impacted by anthropogenic activities. In order to secure its protection, it is important to see it as a resource that is subject to exploitation, plus more. It subjects the atmosphere to the principles of conservation, and sustainable use. It bears noting here that some members expressed doubts that the atmosphere could be treated analogously as aquifers or watercourses.

Draft guideline 5 contains two paragraphs. Paragraph 1 acknowledges that the atmosphere is a "natural resource with a limited assimilation capacity". The Drafting Committee preferred this phrase to "the finite nature of the atmosphere" as proposed by the Special Rapporteur, which was considered to be imprecise and bound to raise questions as it was the introduction or release of substances into the atmosphere and alterations to the atmospheric conditions which necessarily impacted the atmosphere. The second part of paragraph 1 seeks to integrate conservation and development to ensure that modifications to the planet continue to secure the survival and well-being of organisms on Earth. It does so by reference to the proposition that the utilization of the atmosphere should be undertaken in a sustainable manner. This is inspired by the Commission's formulations on the Articles on the Law of Transboundary Aquifers (2006) (articles 4 and

5) and the Convention on the Law on the Non-navigational Uses of International Watercourses (1997) (articles 5 and 6).

The term "utilization" is used broadly and in general terms evoking notions beyond actual exploitation and the commentary will elaborate further on this point. It is noted that some members of the Drafting Committee had difficulties with the notion of "utilization" of the atmosphere given that it was often activities of humans that, directly or indirectly, had an impact on the atmosphere as an envelope of gases and not the utilization of the atmosphere as such that was the major concern.

It was nevertheless considered that the formulation "its utilization should be undertaken in a sustainable manner" was simple and not overly legalistic. This formulation better reflected a paradigmatic shift towards viewing the atmosphere as a natural resource which ought to be utilized in a sustainable manner. It is presented more as a statement of international policy and regulation than an operational code to determine rights and obligations among States.

<u>Paragraph 2</u> builds upon the language of the International Court of Justice in the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (*I.C.J. Reports 1997*, para. 140) referring to the "need to reconcile environmental protection and economic development". The formulation previously proposed by the Special Rapporteur inviting the need to "ensure proper balance" was seen as unnecessarily conflictual, pitting economic development against environmental protection. Further, the reference to "protection of the atmosphere" as opposed to "environmental protection" seeks to focus the paragraph to the subject matter of the present topic, which is the protection of the atmosphere.

Some members of the Drafting Committee were of the view that paragraph 2 was unnecessary, as it simply reflected a statement that could for instance be contained in a commentary to elucidate the guideline.

The title of draft guideline 5 is "Sustainable utilization of the atmosphere", as originally proposed by the Special Rapporteur. As noted earlier, the draft guideline 5 on International cooperation, provisionally adopted last year, will now be draft guideline 8.

I now turn to draft guideline 6.

Draft guideline 6: Equitable and reasonable utilization of the atmosphere

This draft guideline deals with equitable and reasonable utilization of the atmosphere. It is an important element of sustainability as reflected in draft guideline 5, but autonomous. Discussions in the Drafting Committee were based on a reformulated text by the Special Rapporteur, taking into account comments made in the plenary. Like the preceding draft guideline, some members questioned the usefulness of this proposed guideline in relation to the atmosphere, more so that draft guideline 5 already addresses sustainable utilization.

Like draft guideline 5, the present guideline is formulated at a broad level of abstraction and generality. Instead of indicating that States "should utilize the atmosphere", it provides that: "The atmosphere should be utilized in an equitable and reasonable manner, taking into account the interests of present and future generations."

The draft guideline is formulated in general terms, seeking to apply the principle of equity to the protection of the atmosphere as a natural resource which is shared by all. The first part of the guideline deals with "equitable and reasonable" utilization. The reference that the "atmosphere should be utilized in an equitable and reasonable manner" draws, in part, upon article 5 of the Convention on the Non-navigational Uses of International Watercourses, and article 4 of the Articles on the Law of Transboundary Aquifers. The differences between the atmosphere on the one hand and watercourses or aquifers on the other were stressed by some members of the Drafting Committee. This requires a balancing of interests and consideration of all relevant factors that may be unique to atmospheric pollution, on the one hand, and atmospheric degradation, on the other.

The second part of the formulation addresses questions of intra and inter-generational equity. In order to draw out the link between the two aspects of equity, the Drafting Committee elected to use the phrase "taking into account the interests of present

and future generations”, instead of “and for the benefit of present and future generations of humankind”. The words “the interests”, not “the benefit of” have been used to signal the integrated nature of the atmosphere, whose “exploitation” needs to take into account a balancing of interests to ensure sustenance of life for the Earth's living organisms.

Draft guideline 6 is entitled “Equitable and reasonable utilization of the atmosphere,” adding the word “reasonable” to the title originally proposed by the Special Rapporteur.

Before I turn to the last guideline, let me say a few words about the preambular paragraph, which was also considered and adopted by the Drafting Committee, as it was proposed by the Special Rapporteur in relation to considerations of equity, in particular intra-generational equity.

The discussion in the Drafting Committee was based on a revised proposal by the Special Rapporteur, which sought to reflect the concept of “different national circumstances” in the text. Such a reference was considered inappropriate in this context, as it reflected a broader notion, and was viewed to be associated with the concept of common but differentiated responsibilities, which is not part of the current topic according to the 2013 Understanding.

While the original formulation proposed by the Special Rapporteur in his third report was drawn from the ninth preambular paragraph of the Articles on the Law of Transboundary Aquifers, the present formulation uses the seventh paragraph of the preamble of the Convention on the Non-navigational Uses of International Watercourses.

Thus, as presently formulated, the preambular paragraph reads: “Aware of the special situation and needs of developing countries,”.

Following the proposal of the Special Rapporteur, it will appear in the text of preambular paragraphs adopted on this topic as the fourth preambular paragraph. It simply acknowledges the factual awareness of the special situation and needs of developing countries.

I now turn to last draft guideline adopted at this session on this topic.

Draft guideline 7: Intentional large-scale modification of the atmosphere

Draft guideline 7 deals with activities whose very purpose is to alter atmospheric conditions; the clear and concrete intention being to modify at a large-scale such conditions.

The draft guideline had a varied itinerary in its consideration at the current session. The Special Rapporteur initially proposed it as draft guideline 7; in his revised proposals submitted in the light of the debate in plenary, it was then presented as an additional paragraph 3 to draft guideline 5; and finally, following discussion in the Drafting Committee, there was a reconsideration that this particular issue deserved a separate and independent guideline. Moreover, on the substance, the Special Rapporteur, in his third report, proposed a draft article on geo-engineering, which was revised in general terms following the plenary debate. It was on the basis of this revised version that the Drafting Committee undertook its consideration.

In the Drafting Committee, even though the formulation in general terms was considered to be a step in the right direction, there were some concerns about the seemingly broad scope of the proposed provision. Indeed, several members remained unpersuaded that there was a need for a draft guideline on matters which essentially remained controversial, and the discussion on it was evolving, and is based on scant practice.

As presently formulated, the draft guideline provides that: "Activities aimed at intentional large-scale modification of the atmosphere should be conducted with prudence and caution, subject to any applicable rules of international of law."

The term "activities" is broadly understood but these are "activities aimed at intentional large-scale modification of the atmosphere". The Drafting Committee worked on different formulations before settling on this language which tracks the definition of

"geoengineering" and of "environmental modification techniques" under the 1976 Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques (ENMOD Convention), which refers to any technique for changing - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space.

As noted earlier, the term "activities" is broadly understood. There are certain other activities that are prohibited by international law. It is the understanding of the Drafting Committee that these are not covered by the present draft guideline. The ENMOD Convention, for example, is specifically intended to prevent use of the environment as a means of warfare, by prohibiting the deliberate manipulation of natural processes that could produce phenomena such as hurricanes, tidal waves or changes in climate. This Convention regulates the deliberate manipulation of natural processes of a transboundary nature, which have "widespread, long-lasting or severe effects" (article 1). Moreover, Protocol I of 1977 additional to the Geneva Conventions of 1949 applying to international armed conflict contains provisions which are complementary to the ENMOD Convention in the event of armed conflict: While the Convention prohibits deliberate modification of the environment as a means of warfare, Additional Protocol I prohibits attacks on the environment as such, regardless of the means used (articles 35 (3) and 55; see also article 8 (2)(b)(iv) of the Rome Statute of the International Criminal Court).

In the course of the discussion of the Drafting Committee, there was a proposal to qualify "activities" as intending to refer to only "non-military" activities. Given the understanding that this draft guideline does not apply to such activities, some discussion occurred as to whether the draft guidelines as a whole apply to "non-military" activities. Some members viewed this understanding to be applicable only with respect to the present guideline, as any other interpretation would give rise to interpretations concerning matters of scope, a guideline of which was provisionally adopted last year, without any limitations being imposed to that effect. Some other members noted that the withdrawal of the proposal on the formulation of the present guideline to qualify "activities" by "non-

military" was made precisely because these members had believed that the draft guidelines as a whole would not apply to military activities.

Some of the activities are subject to regulation and will continue to be governed by the various applicable regimes. For example, afforestation has been incorporated in the Kyoto Protocol regime and in the Paris Agreement (article 5(2)). Under some international legal instruments, measures have been adopted for regulating carbon capture and storage. The 1996 Protocol to the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, now includes an amended provision and annex, as well as new guidelines for controlling the dumping of wastes and other matter. To the extent "ocean iron fertilization" and "ocean alkalinity enhancement" relate to questions of ocean dumping, the 1972 London Convention and the 1996 Protocol thereto (London Protocol) are relevant.

It is also not the intention of the draft guideline to stifle innovation and scientific advancement. Principles 7 and 9 of the Rio Declaration acknowledge the importance of new and innovative technologies and cooperation in these areas.

Accordingly, the draft guideline does not seek to prohibit such activities unless there is agreement among States to take such course of action. It simply sets out the principle that such activities should be conducted with prudence and caution. The reference to "prudence and caution" is inspired by the language of the International Tribunal for the Law of the Sea in the *Case of Southern Blue Fin Tuna (New Zealand* v. *Japan; Australia v. Japan)* (para. 77), the *Case of the Mox Plant (Ireland* v. *United Kingdom)* (para. 84), and the *Case concerning Land Reclamation by Singapore in and around the Strait of Johor (Malaysia* v. *Singapore)* (para. 99). The draft guideline is cast in hortatory language, aimed at encouraging the development of rules to govern such activities, within the regimes competent in the various fields relevant to atmospheric pollution and atmospheric degradation.

It should be further noted that the draft guideline provides an important threshold to such activities. They have to involve "intentional" modification, and the activities should be at a "large-scale".

The last part of the guideline refers to “subject to any applicable rules of international law”. There was some discussion in the Drafting Committee as to whether it was appropriate to refer in a hortatory guideline to “and in accordance with existing international law” as originally proposed by the Special Rapporteur. Accordingly, there were some suggestions to delete such a reference. As presently formulated, a “comma” separates the first part of the guideline, whose appreciation is to “subject to any applicable rules of international law”. It is understood that international law would continue to operate in the background in relation to the draft guideline.

The original proposal by the Special Rapporteur contained a reference to “transparency” but the Drafting Committee decided to address this matter in the commentary. Similarly, considering that draft guideline 4 deals with an environmental impact assessment, it elected to suppress the second sentence of the original proposal according to which environmental impact assessments were required for such activities and to address this matter in the commentary.

The title of draft guideline 7, is “Intentional large-scale modification of the atmosphere”, as opposed to “modification of the atmosphere” in terms of an earlier proposal in the Drafting Committee. This has been done to signal that the draft guideline addresses only intentional modification at a large-scale.

Mr. Chairman, this concludes my introduction of the fifth report of the Drafting Committee for the sixty-eighth session. It is my sincere hope that the Commission will be in a position to provisionally adopt the draft guidelines, and the preambular paragraph as presented.

I thank you for your kind attention.