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Protection of the Atmosphere

Statement of the Chair of the Drafting Committee
Mr. Charles Chernor Jalloh

2 July 2018

Mr. Chair,

It is wonderful to see everyone again here in Geneva, after a highly productive if sometimes intense first half session in New York. Not only did we appropriately celebrate the Commission's historic 70th anniversary, at the headquarters of the United Nations, we also had many formal and informal opportunities to engage with member states. This is quite befitting, in my view, considering that the Commission last met there during the celebration of our 50th anniversary twenty-years ago. I hope that it will not take another two decades for the whole Commission to benefit from such rich interactions with delegates of the Sixth Committee as these would help enhance mutual understanding with the member states and strengthen our symbiotic and complementary relationship.

New York was also excellent because we accomplished some important milestones in the Drafting Committee with the successful completion of two second readings on two topics, namely, subsequent agreements and subsequent practice in relation to the interpretation of treaties, and identification of customary international law. Colleagues

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would recall that I reported back to the plenary on those two topics on 18 May 2018 and on 25 May 2018 respectively, in addition to giving a prior oral interim report, on 14 May 2018, concerning the topic peremptory norms of general international law (*jus cogens*) which had remaining work from the sixty-ninth (i.e. 2017) session. The Drafting Committee also considered provisional application of treaties and protection of the atmosphere in New York, those being the two first reading topics under consideration in the present session. I reported back to the plenary on the first of those two topics regarding the provisional application of treaties on 31 May 2016, just before the first half session concluded. Per our work programme, I was scheduled to report to the Plenary on the second and last first reading topic concerning the protection of the atmosphere upon our resumption in Geneva.

Against this backdrop of achievement of the Commission's ambitious work plan for our New York meetings, which momentum I hope the Drafting Committee will retain for the remaining topics scheduled for the Geneva segment, I am pleased today to present the fifth report of the Drafting Committee for the seventieth session of the Commission, this time, on the topic "Protection of the atmosphere". The report is contained in document A/CN.4/L.909 which was issued on 6 June 2018. Together with the preamble, it contains 12 draft guidelines, completed on first reading, including 3 draft guidelines considered and adopted at the present session.

Before I address the details of the draft guidelines provisionally adopted by the Drafting Committee, I would like to pay tribute to the Special Rapporteur, Mr. Shinya Murase, whose mastery of the subject, constructive spirit and collegiality greatly facilitated the work of the Drafting Committee and made my task, as Chair, considerably easier. I am also most grateful to the members of the Drafting Committee for their active participation and valuable contributions to the successful outcome, especially during our final meeting. I would like to note that some members of the Drafting Committee participated in its meetings and in the discussions, while continuing to express reservations with respect to the topic. I hope that those members, whose textual or other concerns about points of substance during our deliberations and who eventually joined the consensus afterwards, would not seek to reopen or to block the Plenary's adoption of consensus text that was already provisionally adopted by the Drafting Committee without any formal objections.

Of course, this is without prejudice to any reserving member's right to state his or her position in the plenary record in the usual way.

I would also wish to thank the Secretariat for its invaluable assistance during the Drafting Committee and, as always, the interpreters continued to perform, behind the scenes, a challenging task for the Drafting Committee, and I am grateful to them. I trust that our able Secretariat as well as the interpreters in Geneva would communicate my deep gratitude to their respective New York colleagues.

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Mr. Chair,

The Drafting Committee devoted five meetings – the 17th, 18th, 19th, 20th and 21st meetings – on 29, 30 and 31 May 2018, to the consideration of the draft guidelines, together with the draft preamble, relating to this topic. It examined the three draft guidelines initially proposed by the Special Rapporteur in his Fifth Report (A/CN.4/711), together with a number of reformulations that were proposed by the Special Rapporteur to the Drafting Committee in order to respond to suggestions made, or concerns raised, during the debates in Plenary and in the Drafting Committee. It bears recalling that the Commission has provisionally adopted draft guidelines 1 to 9 and a draft preamble on this topic. Accordingly, I should like to draw attention to the previous statements by the Chair of the Drafting Committee at the sixty-ninth (2017), sixty-eighth (2016) and sixty-seventh (2015) sessions. The Drafting Committee provisionally adopted, at the present session, a total of three new draft guidelines on this topic; that is, draft guidelines 10, 11 and 12.

Following the adoption of draft guidelines 10 to 12, the Drafting Committee undertook a *toilettage* of the entire set of the draft guidelines, and of the draft preamble. As a consequence, changes were made to draft guidelines 2 and 9. The change to draft guideline 2 bears on substance while the change to guideline 9 is cosmetic. As in other similar situations, such as was done in relation to the topic provisional application of treaties, I would recommend that the Plenary only take action on the new or slightly adjusted draft guidelines.

In my introduction of the present report, I will begin with the draft preamble and draft guidelines 1 to 9. I will then turn to draft guidelines 10 to 12, provisionally adopted by the Drafting Committee at the present session. I will conclude, at the end, with a word about the title of the entire package and refer members to the statements of the Chairs of the Draft Committee at previous sessions for an explanation of those draft guidelines adopted in previous sessions which were not amended this year.

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Draft preamble

No changes were made to the draft preamble, which remains as provisionally adopted by the Commission, except that the Drafting Committee agreed that the ellipsis and the text in brackets indicating that further preambular paragraphs may be added would be removed given that work on the topic has been completed. It was further noted that, in the Commission practice, preambles are typically not included at the first reading stage where the current topic has reached. However, due to the way the guidelines concerning this topic had evolved with language from some guideline proposals moved to a draft preamble, such language had been periodically included. During the present session, a number of preamble related proposals, including textual ones and others relating to the ordering of the paragraphs were made, but were only briefly discussed by the Drafting Committee. This was because of our collective sense that the entire preambular language should be carefully considered, and amended where appropriate, during the second reading stage and consistent with the Commission's practice. The Special Rapporteur, in his summing up of this year's plenary debate, also indicated he will have proposals for the preamble during the second reading.

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Draft guidelines 1 to 9

Draft guideline 1 on the "Use of terms" remains as previously adopted. It defines the key terms that are vital to understanding the topic: "atmosphere", "atmospheric pollution", and "atmospheric degradation". No changes were made to this guideline.

As to **draft guideline 2**, concerning the "Scope of the guidelines", it will be recalled that paragraph 1 had been adopted by the Commission with alternative formulations in brackets, namely, "[contain guiding principles relating to]" and "[deal with]", which were left subject to further consideration. Upon review of the entire set of draft guidelines, the Drafting Committee considered the words "address", "relate to" or "concern" and concluded that the latter word (i.e. "concern"), which had been used in defining the scope of the topic "Identification of customary international law" was more appropriate than the other options. Thus, paragraph 1 was adopted using the term "concern" which was preferred over the phrases "contain guiding principles relating to" and "deal with". Paragraph 1 of draft guideline, therefore, reads as follows: "The present draft guidelines concern the protection of the atmosphere from atmospheric pollution and atmospheric degradation." No changes were made to paragraphs 2 to 4 of that draft guideline. Although there was some discussion whether to revisit the use of "deal with" in paragraphs 2 to 3, of draft guideline 2, which some members felt could be better formulated, others observed it had been carefully negotiated language forming part of the understanding concerning the topic. The language was left as is to avoid reopening potentially sensitive issues.

Draft guidelines 3 to 8, which address, respectively, the "obligation to protect the atmosphere", "environmental impact assessment", "sustainable utilization of the atmosphere," "equitable and reasonable use of the atmosphere", "intentional large-scale modification of the atmosphere" and "international cooperation" remain as previously adopted. The discussions and logic underpinning those draft guidelines, as addressed by the Drafting Committee during the prior sessions, can be found in the reports of the Chair of the Drafting Committee. Those are available under the relevant section of the Commission's website. I therefore do not consider it necessary to say anything further about draft guidelines 3 to 8 in the present report.

Allow me to now turn to draft guideline 9. No substantive change was made to **draft guideline 9**, on the **"**Interrelationship among relevant rules", although an issue of

punctuation was addressed. The previously adopted draft guideline 9, it will be recalled, contains three paragraphs regarding the relationship between rules of international law concerning the atmosphere and other relevant rules of international law. Paragraphs 1 and 2 are general in nature, while paragraph 3 emphasizes the protection of groups particularly vulnerable to atmospheric pollution and atmospheric degradation. Paragraph 1, which is the only one which was slightly amended to add two commas, stated that "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." The only change made, as already mentioned, related to the insertion in the first part of the sentence of two commas before and after the expression, "*inter alia*", for the purpose of *toilettage*. This is not a substantive change. So, the import of the guideline remains the same.

For avoidance of any doubt, as explained by the Chair of the Drafting Committee in 2017, the reference to "including *inter alia* the rules of international trade and investment law, of the law of the sea, and of international human rights law" in Draft Guideline 9, paragraph 1, reflected "the concern within the Drafting Committee to capture, on the one hand, the practical importance of these three areas to the atmosphere, and, on the other, the risk of overlooking other fields of law, which might be equally relevant." The addition of the commas to the Latin phrase so that the sentence now reads "including, *inter alia*," has the effect of underscoring the sense of this year's Drafting Committee to further emphasize this "without prejudice" categorization; and hopefully will help settle any future questions by establishing that the list of relevant fields of law is not exhaustive or intended to be so.

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Mr. Chair,

Let me now turn to the three new draft guidelines provisionally adopted by the Drafting Committee at the present session, which at the end of this report, will be submitted with my recommendation for adoption by the Plenary.

Draft guideline 10

Mr. Chair,

I draw your attention to draft guideline 10 concerning implementation. The draft guideline consists of two paragraphs, which address, on one hand, existing obligations under international law, and on the other hand, recommendations contained in the draft guidelines.

Paragraph 1 of the draft guideline reads as follows: "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."

The text of paragraph 1, as initially proposed by the Special Rapporteur in his Fifth Report, was modified to reflect the idea that States may implement their obligations at the national level without being limited to implementation in their national law as such. Therefore, the reference to "States are required to implement in their national law the obligations", as originally proposed by the Special Rapporteur, has been replaced by "[n]ational implementation of obligations under international law". The Drafting Committee agreed that the term "national" implementation would be clarified in the commentary to take into account the various ways in which obligations under international law may be implemented. This would also cover situations in which obligations of regional organizations, for instance the European Union, may be implicated.

Regarding the use of the term "obligations", the Special Rapporteur explained that this provision does not impose nor create new obligations on States, but rather refers to existing obligations that States already have under international law. In this respect, the phrase "obligations affirmed by the present draft guidelines" has been replaced by

"including those [obligations] referred to in the present draft guidelines". Members of the Drafting Committee preferred the expression "referred to" over the expression "affirmed by", with a view to clarifying that the draft guidelines do not as such create new obligations and are not comprehensive of the issues related to the topic. It was observed that many of the earlier draft guidelines, for instance draft guidelines 5, 6 and 7, employ the language of "should" making them more recommendatory in nature. While other draft guidelines, such as those contained in draft guidelines 3, 4 and 8, speak to States bearing or having "the obligation".

As to the forms of national implementation, the word "may" was added to reflect the elective nature of the provision rather than using the terms "required to" – as had been initially proposed by the Special Rapporteur. It was agreed that the commentary would explain that if national implementation was indeed required, it "may" take different forms. Explicit reference was made to "legislative, administrative, judicial and other actions". In this regard, the reference to "administrative" action was retained as originally proposed in the Fifth Report. As suggested in plenary, the Drafting Committee discussed whether "executive" actions would be more appropriate wording, but it was considered that "administrative" was more encompassing in that it also covered "executive" actions including those from lower levels of governmental administration. At any rate the term "other actions" at the end of the sentence would be a residual category covering all other forms of national implementation.

With regard to the proposed paragraph 2 on the subject of the responsibility of States, as originally proposed by the Special Rapporteur in his Fifth Report (A/CN.4/711) and revised by him to take into account the views of members expressed during the plenary debate, there was agreement among the members of the Drafting Committee that this paragraph was unnecessary for the purposes of the present draft guidelines. In the main, it was considered that the secondary rules of responsibility was a subject that the Commission had already had an occasion to elaborate upon, adopting in 2001 the draft articles on the Responsibility of States for internationally wrongful acts. In this view, those rules would therefore apply, *mutatis mutandis*, in relation to environmental matters, including protection of the atmosphere from atmospheric pollution and atmospheric degradation. On the other hand, the Special Rapporteur stressed that some States had indicated that the issue

of responsibility should be taken on squarely and not in the form of a without prejudice clause. He further suggested that the element of "damage", which would be relevant for this topic, had in any event not been incorporated into the secondary rules of State responsibility under the 2001 draft articles and had been a matter left for determination by primary rules. Nonetheless, the Drafting Committee concluded that a paragraph on the subject, even if it were framed as a without prejudice clause, would unbalance the text of the draft guidelines and not do justice to a subject that took the Commission many years to complete. As a result, this paragraph was deleted and the Special Rapporteur indicated that the issue will be dealt with, if appropriate, in the commentary.

Paragraph 2, as adopted, reads: "States should endeavour to give effect to the recommendations contained in the present draft guidelines." There was agreement among the members of the Drafting Committee that the reference to "the recommendations contained in the present draft guidelines" was intended to distinguish it from "obligations" as used in paragraph 1 of draft guideline 10. The Drafting Committee concluded that the reference to "recommendations" in this paragraph, although not entirely felicitous, was appropriate, on the understanding that the Special Rapporteur would clarify in the commentary the meaning of the term "recommendations" and that it would be consistent with the draft guidelines which use the term "should" in the formulation. The reference to "recommendations" is not intended to dilute any normative content of any of the draft guidelines.

The Drafting Committee also discussed whether the term "good faith", as originally proposed by the Special Rapporteur, should be retained. The way the term was used and whether it was to be understood within the meaning of the Vienna Convention on the Law of Treaties were questioned. The Special Rapporteur explained that the concept of "good faith" was intended to capture both its legal and ethical dimensions. There was agreement among the members of the Drafting Committee that under environmental law, "good faith" had a specific meaning and entailed specific legal implications, which were not necessarily covered in the draft guidelines. As a result, reference to the term "good faith" was deleted from the provision.

Regarding the originally proposed paragraph 4, which addressed extraterritorial application of national law by a State to the extent permissible under international law, there was broad agreement among the members of the Drafting Committee that, while recognizing the importance of the issue, this paragraph was not necessary for the purposes of the draft guidelines. This was because the matter of extraterritorial application of national law, by a State, raised a host of complex legal and other questions with far reaching implications for other States and for their relations with each other. In such circumstances, under which further consideration of the practice of States on the issue would be required considering the global commons nature of the atmosphere, it was widely agreed that the extraterritoriality issue could not be satisfactorily addressed in the context of the topic in a single paragraph. This despite that, as initially formulated and subsequently revised by the Special Rapporteur, the proposed language called for any such application to be exercised with care, taking into account comity among the States concerned. Accordingly, this paragraph was deleted. The Special Rapporteur suggested to address the question of extraterritoriality, as appropriate, in the commentary.

Lastly, draft guideline 10 is entitled "Implementation" as originally proposed by the Special Rapporteur.

Draft guideline 11

Mr. Chair,

Allow me now to address draft guideline 11, entitled "compliance", which has been restructured with a view to streamlining the original proposal by the Special Rapporteur.

This draft guideline, which complements draft guideline 10 on implementation, reinforces the principle *pacta sunt servanda* even though its main focus is on the existing compliance mechanisms that may be used. It comprises two paragraphs.

Paragraph 1 reads as follows: "States are required to abide with 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."

The text of paragraph 1 was modified to be better aligned with the principle of *pacta sunt servanda* while, at the same time, focusing on the existing compliance mechanisms. Therefore, the reference to "States are required to effectively comply with the international law norms relating to the protection of the atmosphere in accordance with the relevant multilateral environmental agreements" was replaced with "States are required to abide with 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". Thus, the opening "States are required to effectively comply with" was replaced with "States are required to abide with". Instead of "international law norms", as the Special Rapporteur had initially suggested, the Drafting Committee preferred the reference to "obligations under international law" while further specifying linkage to those obligations concerning "protection of the atmosphere from atmospheric pollution and atmospheric degradation". The effect of using the latter formulation regarding the protection of the atmosphere serves to harmonize the form used, in this paragraph 1, with the language used throughout the draft guidelines. The broad nature of such "obligations under international law" was felt to also better account for the reality that treaty rules constituting obligations may, in some cases, be binding only on the parties to the relevant agreements while others may reflect or later crystallize into customary international law with consequent legal effects for non-parties.

The phrase "multilateral environmental agreements", originally proposed by the Special Rapporteur, was replaced with "relevant agreements to which they [the States] are parties", to avoid narrowing the scope of the provision only to multilateral environmental agreements, when such obligations can exist in other agreements. This reflection of State practice would include multilateral or regional or other trade treaties that may also contemplate environmental protection provisions including exceptions such as those under Article XX of GATT 1947 or even so-called environmental "side agreements" like the North American Agreement on Environmental Cooperation. The Drafting Committee considered that paragraph 1 should serve as an introduction to the following paragraph 2.

Paragraph 2 deals with the facilitative or enforcement procedures that may be used by compliance mechanisms, covering the ideas encapsulated in paragraphs 2, 3 and 4 originally proposed by the Special Rapporteur.

The chapeau of paragraph 2 reads as follows: "To achieve compliance, facilitative or enforcement procedures may be used, as appropriate, in accordance with the relevant agreements:".

The opening phrase "For non-compliance", as initially proposed by the Special Rapporteur, was stated more positively by replacement with "To achieve compliance". There was agreement among the members of the Drafting Committee that paragraph 2 should start with a purposive positive approach and its wording should be aligned with existing agreements. Similarly, the word "approaches" was replaced with "procedures" to reflect the latter technical term often used in such agreements whereas the phrase "may be used, as appropriate," emphasized the differing circumstances and contexts in which facilitative or enforcement procedures could be deployed to help nudge compliance. The expression "and/or", in the initial paragraph 2 referred to the Drafting Committee, was also replaced with "or" to present facilitative or enforcement procedures as alternatives to be considered by the competent organ established under the agreement concerned. The phrase "in accordance with the relevant agreements" is used at the end of the chapeau. It was agreed by the Drafting Committee that the commentary would emphasize that facilitative or enforcement procedures are those provided for under existing agreements to which States are parties, and that such procedures will operate in accordance with such agreements.

Besides the chapeau, Paragraph 2 of Draft Guideline 11 comprises two sub-paragraphs (a) and (b), which were based on paragraphs 3 and 4 originally proposed in the Fifth Report. The structure and punctuation of the sub-paragraphs after the chapeau indicates that the facilitative or enforcement procedures do not affect existing regimes.

The sub-paragraphs, as provisionally adopted, read as follows:

"(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."

In both sub-paragraphs, the word "may" has been added before "include" to provide States with the flexibility in the use of the existing facilitative or enforcement procedures. At the beginning of the sub-paragraphs, the terms "facilitative measures" and "enforcement approaches" were replaced with the terms "facilitative procedures" and "enforcement procedures" respectively, for the purpose of alignment with the chapeau of paragraph 2.

In sub-paragraph (a), the expression "non-complying" before "States", initially proposed by the Special Rapporteur, was deleted. Some members felt the expression gave a negative and punitive connotation when compliance procedures are actually intended to induce compliance. Based on the Montreal Protocol on Substances that Deplete the Ozone Layer, which in Article 8 uses the phrase "Parties found to be in non-compliance", the Drafting Committee considered that it would be more appropriate to focus on the expression "in cases of non-compliance" and refer to "the States concerned" in the provision. The last part of that sentence, which references "taking into account their capabilities and special conditions" was considered necessary, in recognition of the specific challenges that developing and least developed countries often face in the discharge of obligations relating to environmental protection. This is due to, most notably, the general lack of capacity which can sometimes be mitigated through receipt of external support enabling capacity building to facilitate compliance with their obligations under international law.

In sub-paragraph (b), the reference to "multilateral environmental agreements" was replaced with "relevant agreements", as previously explained. After lengthy debate, the term "sanctions", originally proposed in the Fifth Report at the end of paragraph 4, was replaced with the term "enforcement measures". There was agreement among the members of the Drafting Committee that the term "enforcement measures" was more appropriate for

the purposes of the draft guidelines to avoid any confusion with references to unilateral sanctions or the sometimes negative connotation associated with the term "sanctions". As a result, sub-paragraph (b) was adopted with the reference to "enforcement measures".

Draft guideline 11 is entitled "Compliance", as originally proposed by the Special Rapporteur.

Draft guideline 12

Mr. Chair,

Let me know turn to draft guideline 12, which addresses the issue of dispute settlement.

A discussion took place within the Drafting Committee regarding whether it would be appropriate for the Commission to adopt a draft guideline on dispute settlement. Even though some members remained unconvinced of the necessity of such a guideline, the majority of the Drafting Committee agreed with the need for inclusion of such a guideline. It was felt that if disputes arise between States relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation, they should be settled in accordance with international law, using established mechanisms. The purpose of the draft guideline as provisionally adopted is solely to describe the principle of the peaceful settlement of disputes between States, without delimiting specific forms, and to address the use of technical and scientific experts in such disputes. The Drafting Committee therefore settled on a pared down guideline compared to the initial proposal of the Special Rapporteur. Draft guideline 12 comprises two paragraphs.

Paragraph 1 reads: "Disputes between States relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation are to be settled by peaceful means." This paragraph describes the general obligation of States to settle their disputes by peaceful means. The expression "between States" was added to clarify that the disputes being referred to in the paragraph were inter-State in nature. The Drafting Committee considered that the reference to Article 33, paragraph 1 of the Charter of the

United Nations, as originally proposed, should be deleted as a wide variety of amicable means of dispute settlement can be found in the practice of States. The intent, in omitting the specific reference to Article 33, was not to downplay the significance of the various pacific means mentioned in that provision such as negotiation, enquiry, use of good offices, mediation, conciliation, arbitration, judicial settlement or resort to other peaceful means of their choice that may be preferred by the States concerned. There was agreement among the members of the Drafting Committee that I also highlight in my report back to the Plenary that this provision is not to be construed in any way that might interfere with or displace existing dispute settlement provisions in treaty regimes, which will continue to operate in their own terms. It was further agreed that, given the importance of the issue, this aspect should be explained in the commentary. The Drafting Committee ultimately concluded that the commentary emphasize that the main purpose of this paragraph is to reaffirm the principle of peaceful settlement of disputes and to serve as a primer for paragraph 2.

Paragraph 2 reads as follows: "Given that such disputes may be of a fact-intensive and science-dependent character, due consideration should be given to the use of technical and scientific experts." The first part of the sentence implicitly recognizes that disputes in this area would be "fact-intensive" and "science-dependent". Those elements, evident from the experience with inter-State environment disputes, would typically require specialized expertise to contextualize or fully grasp the issues in dispute. For this reason, it would be necessary that "due consideration" be given to the use of technical and scientific experts.

Members of the Drafting Committee decided not to retain the original proposal in the Fifth Report concerning proper assessment of scientific evidence and party appointment and examination of experts, in order to focus on the essential aspect, which is the use of technical and scientific experts in the settlement of inter-State disputes whether by judicial or other means. The reference to "the rules and procedures concerning, *inter alia*, the use of experts in order to ensure proper assessment of scientific evidence, if such disputes are to be settled by arbitration or judicial procedures" was replaced with "the use of technical and scientific experts". The Drafting Committee considered that such reference and the last two sentences of the original proposal concerning the appointment of such experts and their use by the parties or those mandated to settle the dispute or the relative weight to be

accorded to such scientific evidence were descriptive in nature and would be better addressed in the commentary. As a result, they were deleted.

With respect to the originally proposed paragraph 3, which dealt with the principles of *jura novit curia* and *non ultra petita* in the context of judicial settlement of disputes that may arise in relation to the protection of the atmosphere, there was wide agreement among the members of the Drafting Committee that this paragraph was not necessary for the purposes of the draft guidelines and would be more appropriately dealt with in the commentaries. Consequently, this paragraph, which would have been paragraph 3 of draft guideline 12, was deleted.

Draft guideline 12 is entitled "Dispute settlement", as originally proposed by the Special Rapporteur in the Fifth Report.

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Title

Mr. Chair,

After completing its work on the draft guidelines, the Drafting Committee adopted the title of the entire text of draft guidelines on first reading as "Guidelines on Protection of the Atmosphere".

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Mr. Chair,

This concludes my introduction of the fifth report of the Drafting Committee for the seventieth session. As noted earlier in my introduction, since some of the draft guidelines were previously provisionally adopted by the Plenary during the sixty-ninth(2017), sixty-eighth (2016) and sixty-seventh (2015) sessions, I would recommend that, today, the Commission focus specifically on adopting the amended draft guideline 2 and the new draft guidelines 10 to 12 and the title "Guidelines on Protection of the Atmosphere". No action would be necessary for those draft guidelines provisionally adopted by the Commission during its previous sessions, to which no changes were made,

namely draft guidelines 1 to 8, or 9 which had the mere addition of two commas before and after the phrase "*inter alia*" or for that matter the draft preamble on this topic in respect of which square brackets were removed. I would also recommend that the Commission then adopt, on first reading, the entire set of draft guidelines on protection of the atmosphere as a whole.

Thank you.