

INTERNATIONAL LAW COMMISSION

Seventy-second session

Geneva, 26 April – 4 June and 5 July – 6 August 2021

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PROTECTION OF THE ATMOSPHERE

Statement of the Chairperson of the Drafting Committee

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27 May 2021

Mr. Chairperson,

This afternoon, it is my pleasure to introduce the first report of the Drafting Committee for the seventy-second session of the International Law Commission, which concerns the topic “Protection of the Atmosphere”. The report, which is to be found in document A/CN.4/L.951 issued on 15 May 2021, contains the texts and titles of the draft preamble and the draft guidelines on the protection of the atmosphere provisionally adopted by the Drafting Committee, which the Drafting Committee recommends for adoption by the Commission on second reading.

Before I commence, allow me to pay tribute to the Special Rapporteur, Mr. Shinya Murase, whose mastery of the subject, guidance and cooperation once again greatly facilitated the work of the Drafting Committee. I also thank the other members of the Committee for their active participation and significant contributions to the successful outcome. Furthermore, I wish to thank the Secretariat for its invaluable assistance. On behalf of the Drafting Committee, I am also pleased to extend my appreciation to the interpreters. I would also like to convey my gratitude to the conference and technical officers who have made this hybrid session possible. In this regard, this was a session of many “firsts” for the Drafting Committee. It was not only able to conduct its meetings in a hybrid session, but also, for this topic, the Special Rapporteur guided us through the

texts all the way from Japan, time zones away from Geneva. Moreover, the *toilettage final* was conducted through a written procedure.

Mr. Chairperson,

At its 3515th plenary meeting, on 4 May 2021, the Commission decided to refer to the Drafting Committee, the draft guidelines and the preamble contained in sixth report of the Special Rapporteur (A/CN.4/736), taking into account the comments and observations made during the plenary debate. Accordingly, the Committee had before it the text of the entire set of draft guidelines and the preamble as adopted on first reading in 2018, together with the recommendations of the Special Rapporteur contained in his sixth report, the changes suggested by the Special Rapporteur taking into account the plenary debate (ILC(LXXII)DC/PoA/WP.1*), as well as the comments and observations received from Governments and international organizations (A/CN.4/735).

The Drafting Committee devoted six meetings to this topic – the 7th to 12th, on 5, 6, 7, 10, 11 and 12 May, to the consideration of the draft preamble and draft guidelines 1 to 12, together with their draft titles. I am pleased to report that the Committee was able to complete the second reading of a set of 12 draft guidelines, together with the text of a preamble, on the protection of the atmosphere and decided to submit its report to the Plenary with the recommendation that the draft guidelines, together with the preamble, be adopted by the Commission on second reading.

Mr. Chairperson,

At the outset allow me to note that the draft guidelines follow the structure of the first reading text, starting with the preamble, introductory guidelines (draft guidelines 1 and 2), the substantive guidelines (draft guidelines 3 to 8) and then guidelines of a procedural nature (draft guidelines 9 to 12).

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Mr. Chairperson,

I will first address the draft preamble

Draft preamble

The draft preamble seeks to provide a contextual framework to the draft guidelines. It comprises eight paragraphs in relation to which the Special Rapporteur made a number of proposals, consistent with his summing up of the debate on the Sixth report. In that connection, I shall recall the understanding of the Drafting Committee when it adopted the text on first reading 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.

Mr. Chairperson,

As part of the review on second reading, and on the basis of proposals by the Special Rapporteur, some preambular paragraphs have been shifted around or modified.

The **first preambular paragraph** has the overarching purpose of acknowledging the essential importance of the atmosphere for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems. The text has been adopted with one change to the text adopted on first reading to incorporate the formulation "a natural resource, with a limited assimilation capacity" between the words "is" and "essential", responding to a proposal by the Special Rapporteur to introduce the wording "a limited natural resource". The proposal to use instead the formulation "a natural resource, with a limited assimilation capacity," was deemed both consistent with the wording "a limited assimilation capacity" used in draft guideline 5 and a more accurate characterization of the atmosphere. The Drafting Committee also found that it alleviated doubts raised by some members who considered that the phrase "a limited natural resource" was unclear that it still raised questions as to whether the atmosphere was "a limited natural resource" as such. Concerns were also expressed as to whether this formulation was to be understood from a quantitative or qualitative perspective, underlining also that doctrine and practice were insufficient

for the Commission to rely upon the proposed text. The Drafting Committee thus concluded that it was important to include a formulation in the preamble without reopening the substantive debate on the concept, and retained the wording “a natural resource, with a limited assimilation capacity” used in draft guideline 5. The first preambular paragraph as adopted thus reads: “*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”.

The **second preambular paragraph** addresses the functional aspect of the atmosphere as a medium through which the transport and dispersion of polluting and degrading substances occurs. The Drafting Committee adopted this paragraph without changes to the text adopted on first reading.

Mr. Chairperson,

The **third preambular paragraph**, which corresponds to the fourth preambular paragraph as adopted on first reading, underlines the importance of addressing the problems relating the atmosphere. It was a subject of considerable debate, in particular whether it should be changed given the already extensive debate that had occurred during the first reading. The paragraph has been altered. The paragraph as adopted now reads: “*Considering* that atmospheric pollution and atmospheric degradation are a common concern of humankind”.

This paragraph was amended to replace the wording “pressing concern of the international community as a whole” with the wording “common concern of humankind”. The Special Rapporteur had proposed the change with a view to bringing some concordance of the draft guidelines with related instruments in the area, including the 1992 Convention on Biological Diversity, the 1992 United Nations Framework Climate Change Convention, reinforced most recently by the language of the 2015 Paris Agreement. This is an expression that the General Assembly has also used in its 1988 resolution 43/53 on the protection of global climate for present and future generations of mankind, recognizing that climate change was a “common concern of [human]kind”, since the climate was an essential condition which sustains

life on Earth. The proposal was also a response to comments received from States and international organizations on the draft guidelines as adopted on first reading.

The Drafting Committee recalled that the expression has commonly been used in the field of environmental law as underlined by comments received from States, even though doctrine is divided on its precise scope, content and consequences. It was also recalled that the expression “a pressing concern of the international community as a whole” – a formulation internal to the workings of the Commission – was employed on first reading as a compromise for its factual rather than an expression of normative content.

In effecting the change, the Drafting Committee proceeded on the understanding that the commentary would elaborate carefully the origin of the expression, how it was introduced in multilateral instruments and its factual evolution over time. In that regard, it was suggested that, given the fact that the expression might be understood as entailing legal consequences for States, including those creating potentially *erga omnes* obligations, the Special Rapporteur would make clear, in the commentary, that atmospheric pollution and atmospheric degradation reflect a concern of the entire international community because all are affected by them, that its inclusion does not create rights and obligations that are not spelled out in the draft guidelines, in particular, the phrase does not entail *erga omnes* obligations in the context of the draft guidelines, and that it is to be understood as a call to action and as a means to enhance international cooperation.

In addition to the change from “pressing concern of the international community as a whole” to “common concern of humankind”, the Drafting Committee introduced three interrelated changes. First, at the beginning of the paragraph, the wording “*Recognizing* therefore” has been replaced with “*Considering*” so as not to suggest that the wording retained was the result of the Commission’s own assessment of the situation. Second, the wording “the protection of the atmosphere” between “that” and “atmospheric pollution and atmospheric degradation” has been deleted, thus making clear that it was atmospheric pollution and atmospheric degradation that are the common concern of humankind and bringing the wording closer to the relevant text of the 2015 Paris Agreement. Finally, “is” after “atmospheric pollution and atmospheric degradation” was replaced by “are”.

The **fourth preambular paragraph**, which corresponds to the previous fifth preambular paragraph as adopted on first reading, concerns the special situation and needs of developing countries, having regard to considerations of equity. The Drafting Committee adopted that paragraph with no change to the text adopted on first reading.

The **fifth preambular paragraph** corresponds to the third preambular paragraph as adopted on first reading, consistent with the Special Rapporteur's recommendation to change the order of this preambular paragraphs in follow up to a suggestion made by a State. This paragraph acknowledges the "close interaction" that arises from the physical relationship between the atmosphere and the oceans. It was also adopted by the Drafting Committee without any change. The commentary will note the impact of other areas on the atmosphere as well.

In the **sixth and seventh preambular paragraphs**, which respectively address one of the most profound impacts of atmospheric degradation for all States – that is on the sea-level rise caused by global warming – and the interests of future generations, two stylistic amendments proposed by the Special Rapporteur as a result to the reordering of the preambular paragraphs were endorsed by the Drafting Committee. The first amendment consisted in changing the first words of the sixth paragraph from "*Aware also, in particular, ... of*" to "*Noting in particular*". The second change affected the seventh paragraph, where "*Noting*" was replaced with "*Recognizing*".

As a result, the sixth and seventh preambular paragraphs now respectively read:

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

and

"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,"

The last and **eighth preambular paragraph**, was considered in conjunction with paragraph 2 of draft guideline 2, given that both provisions reflected the limitations imposed on the scope of the topic by the 2013 understanding.

These provisions, and the way they interact, were the subject of an extensive discussion in the Drafting Committee. Consistent with comments made during the plenary, the Committee debated, first, whether the 2013 understanding should be reflected at all in the draft guidelines – with some members considering that it was appropriate to delete any reference to it, as suggested by some States and the Special Rapporteur in his sixth report. This approach was also supported given that the Paris Agreement negotiations were now completed and that the understanding had been complied with, thus making it irrelevant at the present stage of second reading. Other members found that it was important to reflect the understanding considering that it imposed a significant limitation on both the scope of the topic and the outcome of the work of the Special Rapporteur and of the Commission.

Second, the debate focused on determining, in the event a reference to the understanding were to be kept, what would be the most appropriate manner of reflecting the matter, with some members in favour of including text in the preamble, and others supporting either keeping it in draft guideline 2, paragraph 2, or in both. Yet other members, favoured including the relevant wording in the general commentary, where contextual information is usually provided, or in a footnote.

Against this background, the concern expressed for transparency led the Special Rapporteur to submit a revised textual proposal including amendments to the text as adopted on first reading which recalled that “the present draft guidelines are not intended to interfere with relevant political negotiations or to impose on current treaty regimes rules or principles not already contained in them”.

The wording of the original preambular paragraph referring to relevant political negotiations as “including those on climate change, ozone depletion, and long-range transboundary air pollution” was deleted, as was the wording stating, “they also neither seek to ‘fill’ gaps in treaty

regimes”, considering that that language might be understood as aimed at curtailing or undermining the relevance of the draft guidelines, as had also been expressed by some States and international organizations. In any event, the phrase “fill the gaps” was considered as now subsumed by the phrase in the text that the draft guidelines “do not seek to impose on current treaty regimes rules or principles not already contained in them”.

It was also recalled that the 2013 understanding was applied primarily to guide the way the Commission developed and elaborated the topic. To some, it was difficult to see how the outcome could interfere with future negotiations, considering that the Commission could not dictate how States utilized the guidelines. Thus, the Drafting Committee chose to replace the language stating the draft guidelines “are not intended to interfere with relevant political negotiations or to impose on current treaty regimes” with a historical emphasis, stating factually that the 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”. The descriptor “legal” to “legal rules or legal principles” was deleted as the focus was on the content and applicability of rules and principles rather than their “legal” character.

Accordingly, preambular paragraph 8, as adopted by the Drafting Committee, now reads as follows:

“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,”

It was pointed out that the elements of the 2013 understanding not reflected in the eighth preambular paragraph, as it stands, would be reflected in the commentary.

Mr. Chairperson,

I shall now turn to draft guidelines 1 to 12. As a preliminary matter, let me note that the Drafting Committee retained the titles of all the draft guidelines except draft guideline 2, which

was changed from “Scope of the guidelines” to “Scope”, taking into account that the latter shorter title is commonly used by the Commission in its work.

I shall now move to the content of the draft guidelines, starting with draft guideline 1.

Draft guideline 1 on the “Use of terms” defines the key terms that are vital to the understanding the topic: “atmosphere”, “atmospheric pollution”, and “atmospheric degradation”.

The Drafting Committee adopted draft guideline 1, paragraphs (a) and (c) without change to the text adopted on first reading.

It however introduced two amendments to the text of paragraph (b), following proposals by some States, by the Special Rapporteur, and by members of the Commission.

First, the Special Rapporteur recommended adding the words “or energy”, between the word “substances” and “contributing”, as suggested by a number of States. It will be recalled that, while the 1979 Convention on Long-Range Transboundary Air Pollution and the 1982 United Nations Convention on the Law of the Sea include “energy”, as well as other substances, as a cause of pollution, the Commission had decided on first reading not to include the term “energy” in its definition of atmospheric pollution on the understanding that, for the purposes of the draft guidelines, the word ‘substances’ included ‘energy’.”

Paragraph (9) of the commentary on the paragraph adopted on first reading notes the understanding of the Commission that, for the purposes of the draft guidelines, the word “substances” includes “energy”. “Energy” was understood to include heat, light, noise and radioactivity introduced and released into the atmosphere through human activities.

Consistent with the views expressed by States on the text as adopted on first reading, as well as those conveyed by members of the Commission during the plenary debate, it was also recalled that the term “energy” included nuclear energy as well as coal- and oil-based energy sources, and that, as such, it was not to be excluded from the scope of the draft guidelines. The inclusion of the term “energy” was further deemed warranted by the Drafting Committee not to depart from the already codified definition of pollution in various multilateral instruments,

including the 1979 Convention on Long-Range Transboundary Air Pollution (article 1 (a)), the 1982 United Nations Convention on the Law of the Sea, article 1, paragraph 1 (4), and the 1999 Protocol concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (article 1 (c)), as well as the contemporary nature of air pollution. Against this backdrop, the Drafting Committee decided to effect the change on the understanding that the definition as contained in the commentary on first reading will be retained.

Secondly, the Drafting Committee also found it appropriate to add the word “significant” between “contributing to” and “deleterious effects”, further to a suggestion to align the wording on the text of paragraph (c).

The change was effected following a debate as to whether it would be appropriate for the purposes of paragraph (b). The Drafting Committee, departing from the differentiation made on first reading, concluded that the change was warranted for purposes of consistency with paragraph (c). It was also underlined that this term has been used in the substantive provisions of some relevant instruments, as well as the jurisprudence of the International Court of Justice, including in its 2015 judgment in the *Case concerning certain activities carried out by Nicaragua in the Border area (Costa Rica v. Nicaragua)* and *Construction of a Road along the San Juan River (Nicaragua v. Costa Rica)*.

As also noted in paragraph (12) of the commentary on first reading, the Commission has also used the term “significant” in its previous work. In that regard, the Commission has stated that “significant is something more than ‘detectable’ but need not be at the level of ‘serious’ or ‘substantial’. The harm must lead to real detrimental effects [and]... such detrimental effects must be able to be measured by factual and objective standards”.

Finally, the Drafting Committee decided to retain the phrase “extending beyond the State of origin”. As noted in paragraph (10) of the commentary adopted on first reading, the expression “effects extending beyond the State of origin” in paragraph (b) clarifies that the draft guidelines address the transboundary effects in the sense provided in article 1 (b) of the 1979 Convention on Long-Range Transboundary Air Pollution that: “[l]ong-range transboundary air pollution” means air pollution whose physical origin is situated wholly or in part within the area under the national

jurisdiction of one State and which has adverse effects in the area under the jurisdiction of another State at such a distance that it is not generally possible to distinguish the contribution of individual emission sources or groups of sources.

Mr. Chairperson,

I will now turn to **draft guideline 2**, concerning the scope of the draft guidelines, which was adopted by the Drafting Committee with several changes.

Paragraph 1 of draft guideline 2 speaks to the general scope of the draft guidelines and specifies that they “concern the protection of the atmosphere from atmospheric pollution and atmospheric degradation”. It was adopted by the Drafting Committee without changes to the text as adopted on first reading.

As I mentioned earlier, paragraph 2 of draft guideline 2, relating to the 2013 understanding was considered by the Drafting Committee in conjunction with preambular paragraph 8, against the background of an extensive debate. This paragraph was subject to a number of changes by the Drafting Committee. The changes introduced helped to facilitate agreement on the eighth preambular paragraph.

Paragraph 2, as modified, now reads: “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”.

For reasons of linguistic clarity, the Drafting Committee first removed the double negative formulation contained in paragraph 2, stating that the draft guidelines “do not deal with, but are without prejudice to”, a formulation, which several States had found confusing. The Drafting Committee instead chose to connect the two elements with the word “and”, stating “do not deal with and are without prejudice to” the principles that follow.

Regarding the part of the paragraph mentioning “the polluter-pays principle, the precautionary principle, [and] common but differentiated responsibilities”, some members proposed to add language referring to principles of international environmental law in general and to reflect those three principles as examples of relevant international environmental law principles

relevant to the protection of the environment, more in line with a proposal referring to “principles of international environmental law”. However, the Drafting Committee found that those three specific principles were mentioned as a factual statement regarding their explicit exclusion from the scope of the draft guidelines, and should therefore be preserved in the paragraph. It was noted that the commentary should elaborate on what other principles might be relevant in this context and also establish clearly that the Commission, in not dealing with the three specified principles, does not in any way imply their legal irrelevance.

The Drafting Committee also decided to delete the wording “the liability of States and their nationals, and the transfer of funds and technology to developing countries, including intellectual property rights”. Some members considered that some of these considerations were already reflected in the excluded principle of common but differentiated responsibilities, and some deemed that, since these elements were not on par with the principles mentioned before them in the paragraph. It was noted that these elements could instead be addressed in the commentary as part of a category excluded because of the understanding.

The previous paragraph 3 of draft guideline 2, which stated that “[t]he present draft guidelines do not deal with specific substances, such as black carbon, tropospheric ozone and other dual-impact substances, which are the subject of negotiations among States”, was deleted by the Drafting Committee, as proposed by the Special Rapporteur. It was noted that it would have been overtly selective and non-comprehensive to mention only some substances and negotiations thereon while not mentioning others, but that the content of that former paragraph should nevertheless be reflected in the commentary as forming an area that the guidelines do not delve into.

The present paragraph 3 (formerly paragraph 4), of draft guideline 2, was adopted without changes to the language on first reading.

Draft guideline 3 on the “Obligation to protect the atmosphere”, which is central to the draft guidelines, was adopted by the Drafting Committee without any change to the text adopted on first reading.

The adoption was however preceded by a debate by the Drafting Committee on a proposal made by the Special Rapporteur to take into account a suggestion from several States to change

“or” with “and” before “control”. This proposal led to an alternative suggestion to move the wording “in accordance with applicable rules of international law” at the end of the paragraph, so as to allow for an interpretation of the applicable rules and provide room for interpretation as to whether “and” or “or” should be used in light of the argument presented, with an explanation in the commentary. The Drafting Committee found that neither of these proposals justified a change to the formulation of the first reading text given that the obligation of due diligence in taking appropriate measures was not necessarily altered by the usage of “and” or “or”. As noted in the commentary on first reading, the reference to “prevent, reduce or control” denotes a variety of measures to 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.

Draft guideline 4 on the “Environmental impact assessment” was adopted by the Drafting Committee with no changes to the text adopted on first reading, on the understanding that the potential effect of the amendment introduced to draft guideline 1 (b), by which “significant” was added to the definition of the term “atmospheric pollution” will be addressed in the commentary. It was also understood that comments made on the draft guideline by States will be taken into account in the commentary.

Draft guideline 5 on the “Sustainable utilization of the atmosphere” was also adopted by the Drafting Committee with no changes to the text adopted on first reading. The addition of “the” before “protection of the atmosphere” was considered a matter of consistency.

The text of **draft guideline 6 on the “Equitable and reasonable utilization of the atmosphere”** was adopted with one change introduced by the Special Rapporteur to insert the term “fully” between “taking” and “into account”.

In this connection, the Drafting Committee first considered an alternative proposal aimed at substituting the wording “taking into account” with “having due regard to”, in line with the 1982 United Nations Convention on the Law of the Sea and various international instruments relating to natural resources. While this wording gained support, in part because it could be understood as

meeting the concerns expressed by some States, the Drafting Committee found that it was important to remain consistent with the language used in preambular paragraph 7 and thus retained the term “fully”. It was understood that the commentary will address what the Commission understands by the addition of “fully”.

Draft guideline 7 addresses intentional large scale modification activities which alter atmospheric conditions. The text as adopted on first reading was amended to include two proposals made by the Special Rapporteur and a third proposal introduced by a member in the course of the discussion.

First, the word “only” was introduced between “should” and “be”, thus further enhancing the prudential and cautionary manner in which activities aimed at intentional large-scale modification may be undertaken.

Second, it was suggested to add “, and” between “caution and “subject”, to clarify that the activities aimed at intentional large-scale modification are conducted subject to any applicable rules of international law. The addition of “, and” was also considered a compromise as some members were concerned about the import of the addition of “only”.

Third, the wording “, including those relating to environmental impact assessment” – so far mentioned only in the relevant commentary – was added after “international law”, as suggested by States. This addition was introduced to add emphasis on the importance of an environmental impact assessment, as reflected in guideline 4.

The Drafting Committee found that these proposals could be retained on the understanding that the Special Rapporteur would provide further clarification on the addition of “including those relating to environmental impact assessment” in the commentary.

Draft guideline 8 on “international cooperation” is central to the draft guidelines. It was adopted by the Drafting Committee with one change to paragraph 2 introduced by the Special Rapporteur, the purpose of which was to include “and technical” after “scientific” which was deemed appropriate by the Drafting Committee. Accordingly, draft guideline 8 reads: “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”.

Draft guideline 9 deals with the interrelationship among relevant “rules of international law relating to the protection of the atmosphere and other relevant rules of international law”, which, as the first paragraph specifies, “should, to the extent possible, be identified, interpreted and applied in order to give rise to a single set of compatible obligations”.

The draft guideline was adopted without changes. There was, however, some debate concerning the meaning of last sentence of the first paragraph, originally providing that the identification, interpretation, and application of relevant rules “should be done in accordance with the relevant rules set forth in the Vienna Convention on the Law of Treaties” and “the principles and rules of customary international law”. The Drafting Committee considered various alternative wording options, including “principles and customary rules of international law”. However, it was deemed that that discussion would open up a substantive debate on the applicable sources of international law, for which there was no time. Therefore, the Drafting Committee adopted paragraph 1 as it was phrased on first reading. Nevertheless, it was understood that the commentaries could reflect that this is without prejudice to the relevance that “general principles of law” might have in relation to the draft guidelines.

Paragraphs 2 and 3 of draft guideline 9, addressing harmonious development of new rules of international law relating to the protection of the atmosphere and special consideration for persons and groups particularly vulnerable to atmospheric pollution and degradation, respectively, were adopted without changes from first reading.

Draft guideline 10 addresses the implementation of obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation. The Drafting Committee adopted this draft guideline without changes to the text adopted on first reading.

Draft guideline 11 has the purpose of elaborating on compliance with relevant obligations. The first paragraph thereof provides that “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 Drafting Committee adopted this paragraph without changes from the text adopted on first reading.

The second paragraph, on first reading, provided that “[t]o achieve compliance, facilitative or enforcement procedures may be used, as appropriate, in accordance with the relevant agreements,” defining in subparagraphs (a) and (b) what facilitative and enforcement procedures may include. This paragraph was adopted with one technical change, removing one comma before the words “as appropriate”. The prior formulation had left it unclear whether it was facilitative or enforcement procedures that may be used “as appropriate” to the circumstances, or whether “in accordance with the relevant agreements” was only relevant to “as appropriate” and not necessarily always. The Drafting Committee was of the view that the latter interpretation should be avoided and that the removal of the comma, so that “as appropriate” would refer to the choice of facilitative or enforcement procedures and not to “in accordance with relevant agreements”, would better convey that conduct should always be in accordance with relevant agreements. It was reiterated that the terms “facilitative procedures” and “enforcement procedures” had been carefully chosen after a review of compliance mechanisms in multilateral environmental agreements, such as the 1997 Kyoto Protocol. These are understood to be “facilitative” and “enforcement” procedures within the context of the relevant agreements.

Draft guideline 12 concerns dispute settlement. Its first paragraph, providing that “[d]isputes between States relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation are to be settled by peaceful means”, was adopted with no changes to the first reading text.

With respect to the second paragraph, the Drafting Committee decided to make two minor technical changes. Firstly, it replaced the opening term “[g]iven that” with the term “since”, as the latter was understood linguistically as more formal and appropriate. Secondly, the Drafting Committee reversed the order of the words “technical and scientific” to instead say “scientific and technical experts”, in order to harmonize the language with the draft guideline 8, paragraph 2, which refers to “scientific and technical knowledge”, as adopted by the Drafting Committee.

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Mr. Chairperson,

This concludes my introduction of the first report of the Drafting Committee for the seventy-second session. As I stated at the beginning of my statement, the Drafting Committee recommends that the Commission adopt, on second reading, the draft guidelines on the protection of the atmosphere for the topic “Protection of the atmosphere”.

Thank you, Mr. Chairperson.
