

Written contribution of the European Union on the draft guidelines on the protection of the atmosphere, as adopted on first reading by the International Law Commission at its 70th session

1. Following the invitation made by the International Law Commission to Governments and international organisations to provide comments and observations on its draft guidelines on the protection of the atmosphere by 15 December 2019, the European Union has the honor to present the following comments.
2. The European Union notes with regret that the suggestion made by the European Union in 2017 to include in the Preamble references to specific agreements, such as the Montreal Protocol, the Air Convention – CLRTAP (the UNECE Convention on Long Range Transboundary Air Pollution - including the Gothenburg Protocol and the importance of its ratification), and the 2017 UNEA Resolution 3/8 on Preventing and reducing air pollution to improve air quality globally, was not taken on board. The Air Convention and the UNEA Resolution 3/8 provide best practices, main principles and core policy for work on air quality linked to pollutant emissions from land-based sources. In addition, the EU would like to draw the attention to MARPOL Annex VI on the prevention of Air Pollution from Ships, which is instrumental in delivering very positive effects on reducing air pollution from ships on a global scale. All these instruments were developed based on the best available science over as long as the last 40 years and it is important to build on this existing framework and the lessons learned from it. The EU would like to stress that these instruments are reflected in the EU acquis, notably in the Directive (EU) 2016/2284 (*) on the reduction of national emissions of certain atmospheric pollutants, but also in the non-road mobile machinery Regulation (EU) 2016/1628 (**) or in the Sulphur in Fuels Directive (EU) 2016/802 (***). In that respect, the European Union would suggest that the ILC considers drafting guideline 3 in a way to encourage States to join, ratify or implement relevant multilateral environmental agreements. This would be in line with the broad scope of the guidelines as set out in guideline 2.
3. The European Union would also like to draw the International Law Commission's attention to the fact that the Preamble refers to the "pressing concern of the

international community". This is an expression, which deviates from the more established "common concern of humankind" often used in international environmental law. The European Union would therefore suggest that the International Law Commission uses the wording "common concern of humankind".

4. The European Union welcomes that paragraph 9 of the commentaries to draft guideline 7 explicitly states that the latter "does not seek either to authorize or to prohibit" geo-engineering. However, the European Union maintains its concern on the possible environmental impact from geo-engineering, and invites the ILC to consider further formulations of caution, in particular by reference to the precautionary principle. Although the European Union appreciates the effort to acknowledge many principles applying to international relations in paragraph 2 of Guideline 2, the European Union finds it necessary to address intentional large-scale modification of the atmosphere by referring to the precautionary principle or other ways that incorporates the environmental concern. In that regard, the European Union has a specific drafting suggestion for the text of draft guideline 7, which is as follows:

Activities aimed at intentional large-scale modification of the atmosphere should be conducted with prudence and caution, subject to a positive opinion of all member States of the United Nations, members of specialised agencies of the United Nations or Regional economic integration organisations potentially concerned, following a multinational environmental impact assessment based on the precautionary principle, public consultations and any other applicable rules of international law.

5. With respect to draft guideline 9, the European Union reiterates its earlier comment in relation to vulnerable groups, namely, that paragraph 3 of guideline 9 should also mention the less affluent members of the national population among vulnerable groups of people. It could be noted that also in developed countries people in less affluent neighborhoods tend to be more affected by air pollution due to their vicinity to busy roads, lifestyle or insufficient access to protection measures or health care.
6. The European Union would also like to draw the ILC's attention to developments under the auspices of the UN and its subsidiary bodies in the field of human rights and

the environment. In addition, the substantive recommendations of the Ad Hoc Open Ended Working Group on strengthening the implementation of international environmental law and governance, as endorsed by the UN General Assembly in its Resolution 73/333, could also be of relevance to the work of the ILC.

7. The European Union welcomes the introduction of guideline 10 on implementation. However, the European Union points out that the ILC recommendations contribute to the implementation of existing international law obligations such as those under the Paris Agreement. Therefore, the European Union would appreciate it if the wording of paragraph 2 would encourage States to express their political commitment to giving effect to the recommendations contained in the guidelines.
8. The European Union also welcomes the introduction of guideline 12 relating to dispute settlement. Considering that the desire for peace has always been embedded in the European Union's policies and is at the core of European integration, the European Union fully supports reaffirming the principle of peaceful settlement of disputes in relation to the protection of the atmosphere from atmospheric pollution and atmospheric degradation.
9. Finally, the European Union welcomes the reference to the scientific aspect of environmental issues. However, the European Union invites the ILC to consider including the science-based policy as a general principle in the guidelines.

Endnotes

(*) Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (Text with EEA relevance), OJ L 344, 17.12.2016, pp. 1–31.

(**) Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (Text with EEA relevance), OJ L 252, 16.9.2016, pp. 53–117.

(***) Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels, OJ L 132, 21.5.2016, pp. 58–78.

(***) Resolution of the General Assembly of 30 August 2019, "Follow-up to the report of the ad hoc open-ended working group established pursuant to General Assembly resolution 72/277" (A/73/L.108).

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