

Germany welcomes the work of the ILC on this highly relevant topic. We thank Special Rapporteur Shinya Murase for his reports and commend the Commission for having finalised the first reading.

The protection of the atmosphere by preventing the introduction of harmful substances is crucial for sustaining life on Earth, human health and welfare and ecosystems. Transboundary air pollution, ozone depletion and changes in the atmospheric conditions leading to, inter alia, climate change are common concerns that need to be addressed by the international community.

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, Germany has the honour to present the following comments:

1. Germany welcomes the decision of the ILC to acknowledge in the preamble the importance of the atmosphere and its essential role for sustaining life on Earth, human health and welfare and ecosystems. We furthermore appreciate that the ILC recognizes the urgency and the global character of atmospheric protection by calling it in the preamble a “pressing concern for the international community as a whole”. Indeed, no State will be able to protect the atmosphere on its own. Instead, this is a matter of concern for all States, and in fact for all people living on our planet. From our perspective, as already laid out in our previous written statement, it may therefore be justified to follow the initial recommendation by the Special Rapporteur and to classify atmospheric protection as a “common concern of humankind”. In the United Nations Framework Convention on Climate Change and in UN General Assembly Resolution 45/53, climate change is already explicitly classified as a common concern of humankind. The international community has confirmed this with the adoption of the Paris Agreement in 2015.
2. In our view, the understanding reached in 2013 to include the topic “protection of the atmosphere” in the ILC’s programme of work only subject to certain thematic limitations is still pertinent. Germany has noted with satisfaction that both the report and the draft guidelines clearly remain within this understanding. As draft guideline 2 fully respects this understanding, the last sentence of the preamble appears to be redundant.

3. Germany welcomes the reflection of the obligation to protect the atmosphere in the draft guideline 3, which in our view is an obligation of *erga omnes* character.
4. Germany welcomes that the obligation to conduct an environmental impact assessment in draft guideline 4 applies in a transboundary context as well as for activities that are likely to have significant adverse effects on the global atmosphere.
5. Draft guideline 7 constitutes, in our view, a well-balanced approach. However, the necessity to conduct an environmental impact assessment according to draft guideline 4 should be added in a second sentence of draft guideline 7 (e.g. “This may imply the necessity of an environmental impact assessment.”).
6. Furthermore, we would suggest adding a new paragraph in draft guideline 9 which encourages States to join, ratify and implement relevant multilateral environmental agreements.

Germany looks forward to a successful outcome of this important project.