



ADVISORY COMMITTEE ON ISSUES OF PUBLIC INTERNATIONAL LAW

ADVISORY REPORT ON

**The ILC's Draft Guidelines on the protection
of the atmosphere**

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Members of the Advisory Committee on Issues of Public International Law

Professor L.J. van den Herik (Chair)

Dr C.M. Brölmann (Vice-Chair)

Dr R. van Alebeek

Dr G.R. den Dekker

Dr B. van Ginkel

Dr A.J.J. de Hoogh

Professor J.G. Lammers

A.E. Rosenboom

Professor C. Ryngaert

Civil service adviser: Professor R.J.M. Lefeber

Executive secretaries:

V.J. de Graaf and F. Arichi

CAVV secretariat:

Postbus 20061

2500 EB The Hague

Tel.: +31 (0)70 348 4889

Email address: djz-ir@minbuza.nl

INTRODUCTION

In June 2018 the International Law Commission (ILC) of the United Nations adopted nine draft guidelines, along with eight preambular paragraphs on the protection of the atmosphere (see Annexe), and commentaries thereto, on first reading (A/73/10, pp. 157-200).¹ In his letter of April 2019 the Minister of Foreign Affairs requested the Advisory Committee on Issues of Public International Law (CAVV) to prepare an advisory report on the Draft Guidelines.

The following advisory report serves as a brief commentary on the Draft Guidelines, including the legal and political context. It concludes with a general evaluation and a number of suggestions with a view to the final version of the Guidelines. The CAVV adopted the advisory report on 14 June 2019.

Although in the past instruments have been adopted relating to some aspects of the atmosphere, such as transboundary air pollution, ozone depletion and climate change, to date there has been no regulation that treats the atmosphere as a 'single global unit'.

With these Draft Guidelines, the ILC has sought, through the progressive development of international law and its codification, to provide guidelines that may assist the international community as it addresses critical questions relating to transboundary and global protection of the atmosphere (A/73/10, p. 161).

The ILC did not seek to prepare draft articles for a framework convention on the protection of the atmosphere.

The substance of the Draft Guidelines was largely inspired by the existing rules and principles relating to the various aspects of the atmosphere and other international environmental issues.

In preparing the Draft Guidelines the ILC imposed a number of restrictions on itself from the outset. The project was undertaken subject to an understanding that limited its scope considerably. This understanding entailed the following:

(a) the ILC's work on the topic would not interfere with relevant political negotiations, including those on climate change, ozone depletion, and long-range transboundary air pollution. Nor would the ILC deal with questions concerning the liability of States and their nationals, the polluter-pays principle, the precautionary principle, common but differentiated responsibilities, and the transfer of funds and technology to developing countries, including intellectual property rights.

(b) specific substances, such as black carbon, tropospheric ozone and other dual-impact substances, which are the subject of negotiations among States, were not to be dealt with. Nor would the ILC seek to 'fill' gaps in treaty regimes.

(c) questions related to outer space, including its delimitation, would not be dealt with.

¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10, Chapter VI* (hereinafter: A/73/10).

(d) the outcome of the work would be Draft Guidelines that would not impose on current treaty regimes legal rules or legal principles not already contained therein.

Special Rapporteur Shinya Murase and the ILC have given little explicit indication of the reasons for these limitations.

The atmosphere as the Earth's largest and most important natural resource

The Draft Guidelines are based on the notion that the atmosphere is the Earth's largest single natural resource and one of its most important. That the atmosphere provides renewable 'flow resources' essential for human, plant and animal survival on the planet, and serves as a medium for transportation and communication. That as a natural resource, the atmosphere was long considered to be non-exhaustible and non-exclusive, since it was assumed that everyone could benefit from it without depriving others. That this view is no longer held. That the atmosphere is a limited resource with limited assimilation capacity. And a medium through which transport and dispersion of polluting and degrading substances occur (A/73/10, p. 162).

The Draft Guidelines are preceded by a preamble, which consists of eight paragraphs and mainly sets out a number of factual observations. For instance, that the atmosphere is essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems. That there is close interaction between the atmosphere and the oceans. That the special situation and needs of developing countries must be recognised, in particular the special situation of low-lying coastal areas and small island developing States due to sea-level rise.

More normatively, it notes 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 eighth and final preambular paragraph points out a number of restrictions on the scope of the Draft Guidelines, arising from the understanding referred to above.

The atmosphere: 'a pressing concern of the international community as a whole'?

The fourth preambular paragraph notably recognises that the protection of the atmosphere is 'a pressing concern of the international community as a whole'.

In his first report in 2014, the Special Rapporteur favoured 'the application of the concept "common concern of humankind" to characterize the legal status of the atmosphere rather than either *res communis* or common heritage of mankind'. He also stressed the importance of 'viewing the atmosphere as a comprehensive single unit, not subject to division along State lines. It was fluid and dynamic such that it would be impractical, if not impossible, for purpose of the project, to divide it in

terms of the air that was under the territorial jurisdiction and control of one State from the air that is outside that jurisdiction.’² (A/69/10, pp. 219, 228).

While the ILC recognised that a number of treaties (e.g. the UN Framework Convention on Climate Change and the Convention on Biological Diversity) and the literature demonstrate some support for the concept of ‘common concern of humankind’ and similar concepts, it decided after some discussion not to adopt this language as ‘the legal consequences of the concept of common concern of humankind remain unclear at the present stage of development of international law relating to the atmosphere’.

The ILC considered it appropriate to express the concern of the international community as a matter of a factual statement, and not as a normative statement, as such, of the gravity of the atmospheric problems (A/69/10, pp. 224-226; A/73/10, pp. 164-165).

Definitions

As a matter of practical necessity, and ‘only for the purposes of the present draft guidelines’, Draft Guideline 1 contains legal definitions of a number of terms, which are not intended in any way to affect any existing or future definitions of any such terms in international law.

Draft Guideline 1 (a) succinctly describes ‘atmosphere’ as ‘the envelope of gases surrounding the Earth’. This definition was inspired by one given by a working group of the Intergovernmental Panel on Climate Change (IPCC). Draft Guidelines 1 (b) and (c) give definitions for ‘atmospheric pollution’ and ‘atmospheric degradation’.

The definition of ‘atmospheric pollution’ is limited to transboundary deleterious effects, as the pollution can also have non-global deleterious effects.

‘Atmospheric degradation’ concerns global phenomena such as climate change and ozone depletion.

Both definitions cover anthropogenic causes. They do not include those of natural origins such as volcanic eruptions and meteorite collisions.

While both definitions are in principle adequate, it is somewhat puzzling that the definition of ‘atmospheric pollution’ does not include the adjective ‘significant’ before ‘deleterious effects’, all the more so because the texts of conventions and protocols on transboundary air pollution always assume that the deleterious transboundary effects must be ‘significant’.

It is also noteworthy that in both definitions the deleterious effects are limited to those ‘of such a nature as to endanger human life and health and the Earth’s natural environment’.

It is worth comparing this with the definition of ‘air pollution’ in the 1979 Convention on Long-range Transboundary Air Pollution:

² *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10, Chapter VIII* (hereinafter: A/69/10).

‘For the purposes of the present Convention: “Air Pollution” means the introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment, and "air pollutants" shall be construed accordingly’.

Or the definition of ‘impact’ in the 1991 Convention on Environmental Impact Assessment in a Transboundary Context:

‘For the purposes of this Convention: “Impact” means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors’.

Scope of the Draft Guidelines

Draft Guideline 2 describes (and, like the eighth preambular paragraph, restricts) the scope of the Guidelines.

Paragraph 4 of Draft Guideline 2 contains a saving clause concerning the status of airspace under international law and questions related to outer space, including its delimitation.

In the words of the ILC:

‘The atmosphere and airspace are two entirely different concepts, which should be distinguished. Airspace is a static and spatial-based institution over which the State, within its territory, has “complete and exclusive sovereignty”. (...) The airspace beyond the boundaries of territorial waters is regarded as being outside the sovereignty of any State and is open for use by all States, like the high seas. On the other hand, the atmosphere, as an envelope of gases surrounding the Earth, is dynamic and fluctuating, with gases that constantly move without regard to territorial boundaries. The atmosphere is invisible, intangible and non-separable.’ (A/73/10, p. 174).

This may be the case, but what is the legal status of the atmosphere? Is it different from that of the high seas or international watercourses?

As mentioned above, the view of the atmosphere as a ‘common concern of humankind’ that determines the legal status of the atmosphere was not adopted by the ILC.

Substantive Draft Guidelines

The Draft Guidelines alternate between using the terms ‘obligation’, ‘should’ and ‘may’.

For instance, Draft Guideline 3 stipulates that ‘States have the 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’.

Draft Guideline 3 is central to the Draft Guidelines. Draft Guidelines 4, 5 and 6 are closely connected with it and seek to apply various principles of international environmental law to the specific situation of the protection of the atmosphere.

The text of Draft Guideline 3 was inspired, *inter alia*, by principle 21 of the 1972 Stockholm Declaration and principle 2 of the 1992 Rio Declaration.

According to the ILC, Draft Guideline 3 is without prejudice to whether or not the obligation to protect the atmosphere is an *erga omnes* obligation in the sense of article 48 of the articles on responsibility of States for internationally wrongful acts. There were different views on this matter within the ILC (A/73/10, p. 175).

Draft Guideline 3 constitutes a 'due diligence' obligation for the States (or a duty of 'best efforts') which is appropriate given the state of the law.

While the ILC recognises that the obligation of States to prevent significant adverse effects from transboundary air pollution is 'firmly established as customary international law', it also believes that 'the existence of this obligation is still somewhat unsettled for global atmospheric degradation. (...) The views of members diverged as to whether (...) the obligation to prevent, reduce, or control global atmospheric degradation exists under customary international law.' (A/73/10, pp. 176-177).

Draft Guideline 4, formulated as an 'obligation', concerns the environmental impact assessment, and follows from Draft Guideline 3. The ILC observes the following in that respect:

'While the relevant precedents for the requirement of an environmental impact assessment primarily address transboundary contexts, it is considered that there is a similar requirement for projects that are likely to have significant adverse effects on the global atmosphere, such as those activities involving intentional large-scale modification of the atmosphere.'³ (A/71/10, p. 290).

The ILC recognises that international case law confirms that the obligation regarding an environmental impact assessment is 'a general obligation under customary international law' (A/73/10, pp. 177-178)

Draft Guideline 5 concerns sustainable utilisation of the atmosphere, given that the atmosphere is a natural resource with a limited assimilation capacity. It recognises that sustainable utilisation of the atmosphere includes the need to reconcile economic development with protection of the atmosphere.

This Draft Guideline is formulated as a 'should' requirement. The ILC observes the following in that respect:

'The formulation "its utilization should be undertaken in a sustainable manner" in the present draft guideline is simple and not overly legalistic (...) It is presented more as a statement of international policy and regulation than an operational code to determine rights and obligations among States.' (A/73/10, p. 180).

³ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10, Chapter VIII* (hereinafter: A/71/10).

Evidently the ILC considers the legal status of the principle of sustainable development to be uncertain at this stage.

Draft Guideline 6 concerns equitable and reasonable utilisation of the atmosphere. Its formulation is partly derived from article 5 of the Convention on the Law of the Non-navigational Uses of International Watercourses and article 4 of the articles on the law of transboundary aquifers: 'It requires a balancing of interests and consideration of all relevant factors that may be unique to either atmospheric pollution or atmospheric degradation.' (A/73/10, p. 181).

It is noteworthy that Draft Guideline 6 is formulated as a 'should' requirement, whereas the provision under the law of international watercourses is considered a binding obligation under general international law.

Draft Guideline 7, also formulated as a 'should' requirement, concerns intentional large-scale modification of the atmosphere. It applies only to 'non-military' activities. The activities covered include, for instance, projects to remove carbon dioxide from the atmosphere (geo-engineering) or to lower the surface temperature of the Earth (solar radiation management). They also include activities that could prevent or limit the adverse effects on the atmosphere of disasters and hazards, including drought, hurricanes, tornadoes, as well as activities that could enhance crop production and the availability of water (A/73/10, p. 182). These activities are of course 'subject to any applicable rules of international law'.

Draft Guideline 7 was not uncontroversial within the ILC: 'A number of members remained unpersuaded that there was a need for a draft guideline on this matter, which essentially remains controversial, and the discussion on it was evolving, and is based on scant practice. Other members were of the view that the draft guideline could be enhanced during second reading.' (A/73/10, p. 183).

Implementation and compliance

Draft Guidelines 10 and 11 concern implementation of and compliance with the obligations to protect the atmosphere. Draft Guideline 10 relates to implementation and Draft Guideline 11 to compliance. The distinction between the two Draft Guidelines – which, as mentioned above, both relate to implementation of and compliance with the obligations to protect the atmosphere – is somewhat artificial.

According to the ILC, Draft Guideline 10 deals with *national* implementation and compliance with obligations under international law. Implementation and compliance at the *international* level is the subject of Draft Guideline 11 (A/73/10, pp. 194, 196).

Strictly speaking, paragraph 1 of Draft Guideline 10 is not formulated as an obligation, although it should have been. As it stands, this paragraph is nothing special and actually amounts to little more than an observation. Paragraph 2 concerns the recommendations contained the Draft Guidelines, by which is meant all Draft Guidelines that are formulated as 'should' requirements.

Paragraph 1 of Draft Guideline 11 reflects the *pacta sunt servanda* principle as regards existing obligations under international law. Paragraph 2 concerns the use of possible existing facilitative or enforcement procedures, in accordance with the relevant international agreements.

Final provisions

Paragraph 1 of Draft Guideline 8 concerns the obligation of States to cooperate internationally and more or less speaks for itself. Paragraph 2, which is formulated as a 'should' requirement, calls for cooperation 'in further enhancing scientific knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation. Cooperation could include exchange of information and joint monitoring.'

Draft Guideline 12 concerns dispute settlement. Paragraph 1 describes the general obligation of States to settle their disputes by peaceful means. Paragraph 2 (which unlike paragraph 1 is only a 'should' requirement) calls to mind that disputes relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation may be of a 'fact-intensive' and 'science-dependent' character.

Draft Guideline 9 concerns the interrelationship between the rules of international law relating to the protection of the atmosphere and other relevant rules of international law, such as the rules of international trade and investment law, of the law of the sea and of international human rights law, recommending that these rules, to the extent possible, should '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. This should be done in accordance with the relevant rules set forth in the Vienna Convention on the Law of Treaties of 1969, including articles 30 and 31, paragraph 3 (c), and the principles and rules of customary international law.'

When developing new rules of international law relating to the protection of the atmosphere and other relevant rules of international law, States should also, 'to the extent possible (...) endeavour to do so in a harmonious manner'. When applying these recommendations, special consideration should be given to persons and groups particularly vulnerable to atmospheric pollution and atmospheric degradation, such as indigenous peoples, people of the least developed countries and people of low-lying coastal areas and small island developing states affected by sea-level rise.

Evaluation and suggestions

The CAVV applauds the fact that the ILC has put the important issue of the protection of the atmosphere on its agenda. Treating the atmosphere as a 'single global unit' is a positive development.

However, the ILC appears to be in two minds about this. On the one hand it considers the issue of the protection of the atmosphere to be of great importance, one which belongs on the international agenda. On the other hand, however, it displays a great deal of caution and almost appears to be divided on the question as to whether it is a matter of international politics or international law.

The Kingdom of the Netherlands' focus during its membership of the UN Security Council on conflict prevention, aimed in part at climate-related root causes and the flood risks posed by rising sea levels

to, among others, small island developing states, has provided the Dutch government with an opportunity to convey this ambition in this context, too.

The Minister of Foreign Affairs is therefore requested to clearly state his views on this matter in his response to the Draft Guidelines on the protection of the atmosphere.

The ILC has stated that with these Draft Guidelines it seeks, through the progressive development of international law and its codification, to provide guidelines that may assist the international community as it addresses critical questions relating to transboundary and global protection of the atmosphere.

It appears to have been only moderately successful. Instead of preparing a number of draft articles on the protection of the atmosphere, it has confined itself to preparing draft guidelines, while subjecting itself to a great many restrictions. In view of the developments that have already taken place in international law concerning long-range transboundary air pollution, ozone depletion and climate change – all parts of the atmosphere – there would seem to be insufficient reason for the restrictions the ILC has imposed on itself by means of the understanding referred to above, particularly with regard to points (a) and (d).

It is unclear why important, recognised international principles of environmental law, such as the polluter-pays principle, the precautionary principle and common but differentiated responsibilities, needed to be disregarded. The fear that the draft guidelines would interfere with ‘relevant political negotiations, including those on climate change, ozone depletion, and long-range transboundary air pollution’, also seems exaggerated.

Moreover, it would not even be possible to ‘impose on current treaty regimes legal rules or legal principles not already contained therein’, as this would far exceed the powers of the ILC.

Inasmuch as there might be gaps in existing treaty regimes, there is indeed a certain risk that the Draft Guidelines, in so far as they comprise proposals for rules or principles of general international law, could play a role in addressing them, but the ILC has endeavoured to rule that out in any case too, which could be considered regrettable.

The recognition in the preamble that the protection of the atmosphere from atmospheric pollution and atmospheric degradation is ‘a pressing concern of the international community as a whole’, intended as a factual observation and in itself not incorrect, also demonstrates a certain reluctance. The fear of the legal consequences of including the notion of a ‘common concern of mankind’ in a preamble is not convincing. This notion is generally accepted, and introducing new notions such as ‘a pressing concern of the international community as a whole’ creates unnecessary confusion.

In the Draft Guidelines the ILC remains extremely vague about what exactly the status of the atmosphere is under international law. It should provide more clarity on this point. Furthermore the ILC should provide more clarity on what atmosphere-related problems could exist in addition to those already known.

The definitions of ‘atmospheric pollution’ and ‘atmospheric degradation’ are based on a notion of harm that is too limited.

Given the restrictions the ILC imposed on itself, the CAVV is pleased to note that, as regards the substance of the Draft Guidelines, the ILC has formulated Draft Guidelines 3 (protection), 4 (environmental impact assessment), 8 (international cooperation), 10 (implementation), 11 (compliance) and 12 (dispute settlement) in terms of 'obligations'. The ILC thus creates the impression that it is taking existing rules and principles as its starting point after all.

The 'should' requirement in Draft Guideline 6 (equitable and reasonable utilisation) appears to be based on the fact that the ILC considers the atmosphere to be more of a common global resource than a transboundary one.

Draft Guideline 7 (intentional large-scale modification of the atmosphere) has wrongly been formulated as a 'should' requirement. Draft Guideline 3 should be considered to apply also to intentional large-scale modification of the atmosphere.

As regards Draft Guideline 9 it should be noted that the issue of the interrelationship among relevant rules of international law is of a general nature and is not unique to the rules concerning the protection of the atmosphere. It is therefore questionable whether there is any great need for a Draft Guideline with such a general scope given that none is included in other draft articles or principles drawn up by the ILC. Should this Draft Guideline be maintained, however, the words 'involving relevant scientists and legal experts at an early stage of the development of such rules' could be added at the end of paragraph 2.

ANNEXE

Text of the draft guidelines on the protection of the atmosphere, together with preamble, adopted by the Commission on first reading

Preamble

Acknowledging that the atmosphere is essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems,

Bearing in mind that the transport and dispersion of polluting and degrading substances occur within the atmosphere,

Noting the close interaction between the atmosphere and the oceans,

Recognizing therefore that the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole,

Aware of the special situation and needs of developing countries,

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

Noting 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,

Recalling that the present draft guidelines are not to interfere with relevant political negotiations, including those on climate change, ozone depletion, and long-range transboundary air pollution, and that they also neither seek to “fill” gaps in treaty regimes nor impose on current treaty regimes legal rules or legal principles not already contained therein,

Guideline 1 Use of terms

For the purposes of the present draft guidelines,

(a) “Atmosphere” means the envelope of gases surrounding the Earth;

(b) “Atmospheric pollution” means 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;

(c) “Atmospheric degradation” means 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.

Guideline 2 Scope of the guidelines

1. The present draft guidelines concern the protection of the atmosphere from atmospheric pollution and atmospheric degradation.
2. The present draft guidelines do not deal with, but are without prejudice to, questions concerning the polluter-pays principle, the precautionary principle, common but differentiated responsibilities, the liability of States and their nationals, and the transfer of funds and technology to developing countries, including intellectual property rights.
3. The 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.
4. Nothing in the present draft guidelines affects the status of airspace under international law nor questions related to outer space, including its delimitation.

Guideline 3 Obligation to protect the atmosphere

States have the 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.

Guideline 4 Environmental impact assessment

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.

Guideline 5 Sustainable utilization of the atmosphere

1. Given that the atmosphere is a natural resource with a limited assimilation capacity, its utilization should be undertaken in a sustainable manner.
2. Sustainable utilization of the atmosphere includes the need to reconcile economic development with protection of the atmosphere.

Guideline 6 Equitable and reasonable utilization of the atmosphere

The atmosphere should be utilized in an equitable and reasonable manner, taking into account the interests of present and future generations. A/73/10 160 GE.18-13644

Guideline 7 Intentional large-scale modification of the atmosphere

Activities aimed at intentional large-scale modification of the atmosphere should be conducted with prudence and caution, subject to any applicable rules of international law.

Guideline 8 International cooperation

1. States have the obligation to cooperate, as appropriate, with each other and with relevant international organizations for the protection of the atmosphere from atmospheric pollution and atmospheric degradation.
2. States should cooperate in further enhancing scientific knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation. Cooperation could include exchange of information and joint monitoring.

Guideline 9 Interrelationship among relevant rules

1. 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. This should be done in accordance with the relevant rules set forth in the Vienna Convention on the Law of Treaties of 1969, including articles 30 and 31, paragraph 3 (c), and the principles and rules of customary international law.
2. States should, to the extent possible, when developing new rules of international law relating to the protection of the atmosphere and other relevant rules of international law, endeavour to do so in a harmonious manner.
3. When applying paragraphs 1 and 2, special consideration should be given to persons and groups particularly vulnerable to atmospheric pollution and atmospheric degradation. Such groups may include, inter alia, indigenous peoples, people of the least developed countries and people of low-lying coastal areas and small island developing States affected by sea-level rise.

Guideline 10 Implementation

1. 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.
2. States should endeavour to give effect to the recommendations contained in the present draft guidelines.

Guideline 11 Compliance

1. 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.
2. To achieve compliance, facilitative or enforcement procedures may be used, as appropriate, in accordance with the relevant agreements:

(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 noncompliance, termination of rights and privileges under the relevant agreements, and other forms of enforcement measures.

Guideline 12 Dispute settlement

1. Disputes between States relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation are to be settled by peaceful means.
2. 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.