



International Law Commission**Seventy-second Session**

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

**Draft report of the International Law Commission
on the work of its seventy-second session***Rapporteur:* Mr. Juan José **Ruda Santolaria****Chapter IV
Protection of the atmosphere****Contents**

	<i>Page</i>
A. Introduction	
B. Consideration of the topic at the present session	
C. Recommendation of the Commission	
D. Tribute to the Special Rapporteur	
E. Text of the draft guidelines on the protection of the atmosphere.....	
1. Text of the draft guidelines, together with preamble.....	
2. Text of the draft guidelines and commentaries thereto	



Chapter IV

Protection of the atmosphere

A. Introduction

1. At its sixty-fifth session (2013), the Commission decided to include the topic “Protection of the atmosphere” in its programme of work, subject to an understanding, and appointed Mr. Shinya Murase as Special Rapporteur.¹

2. The Commission considered the first report of the Special Rapporteur at its sixty-sixth session (2014); the second report at its sixty-seventh session (2015); the third report at its sixty-eighth session (2016); the fourth report at its sixty-ninth session (2017) and the fifth report at its seventieth session (2018).² On the basis of the draft guidelines proposed by the Special Rapporteur in the second, third, fourth and fifth reports, the Commission provisionally adopted 12 draft guidelines and a preamble, together with commentaries thereto, on first reading (2018).³

B. Consideration of the topic at the present session

3. At the present session, the Commission had before it the sixth report of the Special Rapporteur (A/CN.4/736), as well as comments and observations received from Governments and international organizations (A/CN.4/735). The Special Rapporteur, in his report, examined the comments and observations received from governments and international organizations on the draft preamble and guidelines, as adopted on first reading. He considered proposals for consideration on second reading, in the light of the comments and observations, and proposed a recommendation to the General Assembly.

4. The Commission considered the sixth report of the Special Rapporteur at its 3508th to 3510th and 3512th to 3515th meetings, from 26 to 28 April, and on 30 April and 3 and 4 May 2021.

5. Following its debate on the report, the Commission, at its 3515th meeting, held on 4 May 2021, decided to refer draft guidelines 1 to 12, together with the preamble, as contained in the Special Rapporteur’s sixth report, to the Drafting Committee, taking into account the debate in the Commission.

¹ At its 3197th meeting, on 9 August 2013 (*Yearbook ... 2013*, vol. II (Part Two), para. 168). The Commission included the topic in its programme of work on the understanding that: “(a) work on the topic will proceed in a manner so as not to interfere with relevant political negotiations, including on climate change, ozone depletion, and long-range transboundary air pollution. The topic will not deal with, but is also without prejudice to, questions such as: 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) the topic will also not deal with specific substances, such as black carbon, tropospheric ozone, and other dual-impact substances, which are the subject of negotiations among States. The project will not seek to ‘fill’ gaps in the treaty regimes; (c) questions relating to outer space, including its delimitation, are not part of the topic; (d) the outcome of the work on the topic will be draft guidelines that do not seek to impose on current treaty regimes legal rules or legal principles not already contained therein. The Special Rapporteur’s reports would be based on such understanding.” The General Assembly, in paragraph 6 of its resolution 68/112 of 16 December 2013, took note of the decision of the Commission to include the topic in its programme of work. The topic had been included in the long-term programme of work of the Commission during its sixty-third session (*Yearbook ... 2011*, vol. II (Part Two), para. 365), on the basis of the proposal contained in annex II to the report of the Commission on its work at that session (*ibid.*, p. 189).

² A/CN.4/667, A/CN.4/681 and Corr.1 (Chinese only), A/CN.4/692, and A/CN.4/705 and Corr.1, A/CN.4/711, respectively.

³ *Official Records of the General Assembly, Seventieth Session, Supplement No. 10 (A/70/10)*, paras. 53–54; *ibid.*, *Seventy-first Session, Supplement No. 10 (A/71/10)*, paras. 95–96; *ibid.*, *Seventy-second Session, Supplement No. 10 (A/72/10)*, paras. 66–67; and *ibid.*, *Seventy-third Session, Supplement No. 10 (A/73/10)*, paras. 77–78.

6. At its ... meeting, held on ... 2021, the Commission considered the report of the Drafting Committee (A/CN.4/L.951), and adopted the draft guidelines, together with a preamble, on the protection of the atmosphere on second reading (see sect. E.1 below).

7. At its ... to ... meetings, held on ... 2021, the Commission adopted the commentaries to the draft guidelines and the preamble (see sect. E.2 below).

8. In accordance with its statute, the Commission submits the draft guidelines, together with the preamble, to the General Assembly, with the recommendation set out below (see sect. D below).

C. Recommendation of the Commission

9. At its ... meeting, held on ... 2021, the Commission decided, in accordance with article 23 of its statute,

D. Tribute to the Special Rapporteur

10. At its ... meeting, held on ... 2021, the Commission, after adopting the draft guidelines on the protection of the atmosphere, adopted the following resolution by acclamation:

“The International Law Commission,

Having adopted the draft guidelines on the protection of the atmosphere,

Expresses to the Special Rapporteur, Mr. Shinya Murase, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the draft guidelines through his tireless efforts and devoted work, and for the results achieved in the elaboration of the draft guidelines on the protection of the atmosphere.”

E. Text of the draft guidelines on the protection of the atmosphere

1. Text of the draft guidelines, together with preamble

11. The text of the draft guidelines adopted by the Commission, on second reading, at its seventy-second session is reproduced below.

[A/CN.4/L.951]

2. Text of the draft guidelines and commentaries thereto

12. The text of the draft guidelines, together with commentaries thereto, adopted by the Commission on second reading is reproduced below.

[A/CN.4/L.944/Add.1]