



Statement on behalf of the European Union and its Member States

By

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at the General Assembly Sixth Committee

on

Item 81

**Report of the International Law Commission on the work of its sixty-ninth session
"Protection of the atmosphere"**

United Nations

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- CHECK AGAINST DELIVERY -

**Statement of the European Union on Protection of the atmosphere
(UNGA 6th Committee, 72nd session, 2017)**

Mr/Ms Chairperson,

1. The European Union has the honour to continue contributing to the discussion of the 6th Committee regarding the topic of the protection of the atmosphere.

The Candidate Countries the former Yugoslav Republic of Macedonia*, Montenegro*, Serbia* and Albania*, the country of the Stabilisation and Association Process and potential candidate Bosnia and Herzegovina, as well as Ukraine, the Republic of Moldova and Georgia, align themselves with this statement.

2. With regard to draft guidelines 1-7 we would like to recall our statement of 11 October 2016. In particular, we would like to reconfirm our observation that in order to clearly distinguish between the programmatic guidelines on the one hand and the legally binding international agreements on the other hand, it would be preferable not to include, into the guidelines, concepts or wordings that are in conflict with existing international agreements on environmental law.
3. On draft guideline 7 on intentional large-scale modification of the atmosphere, we would like to recall our earlier observation that the present wording of the draft guideline wrongly implies that measures of 'geo-engineering' are in general permissible, while the European Union understands that this draft guideline seeks to remain neutral on the approval or disapproval of those measures. We continue advocating including a reference to the fact that the 150 signatory States to the Convention on Biological Diversity of 1992 have already taken steps to restrict the use of geo-engineering measures insofar as it impacts on biodiversity into the commentary of draft guideline 7. Considering the CBD Technical

* *The former Yugoslav Republic of Macedonia, Montenegro, Serbia and Albania continue to be part of the Stabilisation and Association Process.*

Series No.66 of the Secretariat of the Convention on Biological Diversity of September 2012 entitled "*Geoengineering in Relation to the Convention on Biological Diversity: Technical and Regulatory Matters*", it would be appropriate if guideline 7 makes a reference to the Precautionary Principle.

4. With regard to the fourth report on the protection of the atmosphere, we thank the Special Rapporteur Mr. Shinya Murase for his efforts and would like to make the following observations.
5. We note that the report acknowledges the evolution of the rather problematic reference to the 'special situation and needs of developing countries' and would like to recall our earlier observation on the more balanced approach taken by the 2015 Paris Agreement, which contains the principle of "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances".
6. Relating to the interrelationship between the law of the atmosphere and international trade and investment law, the fourth report contains a number of observations regarding the concepts of mutual supportiveness and sustainable development. We note with appreciation that the report refers to the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part, which stresses the need to enhance the mutual supportiveness between trade and environment policies, rules and measures, explicitly acknowledges the right to regulate environmental issues and the shared responsibilities in implementing the Paris Agreement. In this respect, we would like to recall our earlier observation on the importance of sustainable economic development.
7. The EU takes note that the Special Rapporteur made a reference in paragraph 30 of the fourth report to aviation activities in the European Union Emissions Trading System within Directive 2008/101/EC in their relation to WTO rules. It should be noted that the European Union's decision to temporarily limit the application of the Emissions Trading System to

flights of all nationalities of airlines flying between European countries was not based on its potential non-compatibility with WTO rules as the European Union considers the Aviation Directive as being fully compliant with international law, including international trade law.

8. As to draft guideline 10 as proposed by the report, we note with appreciation the proposed text suggesting that "states should take appropriate measures in the fields of international trade law and international investment law to protect the atmosphere from atmospheric pollution and atmospheric degradation, provided that they shall not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade or foreign investment, respectively".

Mr/Ms Chairperson,

9. With regard to the new text of draft guideline 9 and preambular paragraphs as provisionally adopted by the Drafting Committee of the International Law Commission, we thank the Drafting Committee for its work on this topic and would like to make the following observations.
10. As to the first and second paragraph of the new draft guideline 9, we welcome the link created between protection of the atmosphere and other relevant rules of international law and the streamlining of the proposed guidelines 9-12 of the fourth report into a single guideline. We consider that the new text of draft guideline 9 as provisionally adopted by the Drafting Committee constitutes an improvement as compared to earlier versions and would like to express our preference for this text.
11. In relation to the interrelationship with the law of the sea, and more particularly the relation with Conventions of the International Maritime Organisation (IMO), we recall the decision taken by the IMO in October 2016 to lower the maximum sulphur content of marine fuels to 0,50% as of 2020 as this will significantly reduce atmospheric pollution. However, to ensure compliance with this requirement not only in territorial waters but also in the high

seas, we believe that port States should actively verify the use of low sulphur marine fuels on ships calling its ports in accordance with their duty under the MARPOL Convention and UNCLOS to reduce atmospheric pollution. Thus, with regard to draft guideline 11, we believe that States, first and above all flag states, should take active measures to ensure effective implementation and enforcement of the requirements of sulphur emission.

12. With respect to the interrelationship with international human rights law, and notably the reference to the direct link between atmospheric pollution and an impairment of a protected right as mentioned in paragraph 82 of the fourth report, we believe that a specific reference should be inserted to the 2013 assessment of the WHO International Agency for Research on Cancer (IARC) which concluded that outdoor air pollution is carcinogenic to humans.
13. Specifically in relation to point 2 of draft guideline 12, we believe that poorer parts of the national population should also be mentioned under vulnerable groups of people. Also in developed countries, people in poorer neighbourhoods tend to be more affected by air pollution due to their vicinity to busy roads, lifestyle or deprived access to health care.
14. Finally regarding the preamble, we would like to propose to include references to the Montreal Protocol on Substances that Deplete the Ozone Layer and the need for ratification of its recent amendment agreed in Kigali, to the entry into force of the 2015 Paris Agreement and the need for its quick implementation, to the need of ratification of the amended Gothenburg Protocol to the Convention on Long-range Transboundary Air Pollution, as well as to reflect in an appropriate way the forthcoming political declaration on pollution by the UN Environment Assembly (UNEA), which will take place in December 2017 under the overarching theme of pollution, and the UNEA resolution on air pollution proposed by Canada and co-sponsored inter alia by the EU.

Thank you for your attention.