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**INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING
OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW
(INTERNATIONAL LIABILITY IN CASE OF LOSS FROM TRANSBOUNDARY
HARM ARISING OUT OF HAZARDOUS ACTIVITIES)**

**Preamble, titles and texts of draft principles 1, 2, 3, 4, 5, 6, 7 and 8
adopted by the Drafting Committee**

**Draft Principles on the allocation of loss in the case of transboundary
harm arising out of hazardous activities***

The General Assembly,

Recalling principles 13 and 16 of the Rio Declaration on Environment and Development,

Recalling also the Draft articles on the Prevention of Transboundary Harm from
Hazardous Activities,

* The Commission reserves the right to reconsider the matter of the final form of the instrument at the second reading in the light of the comments and observations of Governments. In the event that the Commission has to prepare a draft framework convention, the exercise would entail some textual changes to draft principles 4 to 8 and a few additions, especially with regard to the resolution of disputes and the relationship between the draft convention and other international instruments.

Aware that incidents involving hazardous activities may occur despite compliance by the relevant State with the provisions of the Draft articles on the Prevention of Transboundary Harm from Hazardous Activities,

Noting that as a result of such incidents other States and/or their nationals may suffer harm and serious losses,

Concerned that appropriate and effective measures should be in place to ensure, as far as possible, that those natural and legal persons, including States, that incur harm or loss as a result of such incidents should be able to obtain prompt and adequate compensation,

Noting that States shall be responsible for infringements of their obligations of prevention under international law,

Recognizing the importance of international cooperation among States,

Recalling the existence of international agreements covering specific categories of hazardous activities,

Desiring to contribute to the further development of international law in this field;

...

Principle 1

Scope of application

The present draft principles apply in relation to transboundary damage caused by activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences.

Principle 2

Use of terms

For the purposes of the present draft principles:

(a) “Damage” means significant damage caused to persons, property or the environment; and includes:

- (i) Loss of life or personal injury;
- (ii) Loss of, or damage to, property, including property which forms part of the cultural heritage;
- (iii) Loss or damage by impairment of the environment;
- (iv) The costs of reasonable measures of reinstatement of the property, or environment, including natural resources;
- (v) The costs of reasonable response measures;

(b) “Environment” includes: natural resources, both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; and the characteristic aspects of the landscape;

(c) “Transboundary damage” means damage caused in the territory or in other places under the jurisdiction or control of a State other than the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in draft principle 1 are carried out;

(d) “Hazardous activity” means an activity which involves a risk of causing significant harm through its physical consequences;

(e) “Operator” means any person in command or control of the activity at the time the incident causing transboundary damage occurs.

Principle 3

Objective

The present draft principles aim at ensuring prompt and adequate compensation to natural or legal persons, including States, that are victims of transboundary damage, including damage to the environment.

Principle 4

Prompt and adequate compensation

1. Each State should take necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control.
2. These measures should include the imposition of liability on the operator or, where appropriate, other person or entity. Such liability should not require proof of fault. Any conditions, limitations or exceptions to such liability should be consistent with draft principle 3.
3. These measures should also include the requirement on the operator or, where appropriate, other person or entity, to establish and maintain financial security such as insurance, bonds or other financial guarantees to cover claims of compensation.
4. In appropriate cases, these measures should include the requirement for the establishment of industry wide funds at the national level.
5. In the event that the measures under the preceding paragraphs are insufficient to provide adequate compensation, the State should also ensure that additional financial resources are allocated.

Principle 5

Response measures

With a view to minimizing any transboundary damage from an incident involving activities falling within the scope of the present draft principles, States, if necessary with the assistance of the operator, or, where appropriate, the operator, should take prompt and effective response measures. Such response measures should include prompt notification and, where appropriate, consultation and cooperation with all potentially affected States.

Principle 6

International and domestic remedies

1. States should provide appropriate procedures to ensure that compensation is provided in furtherance of draft principle 4 to victims of transboundary damage from hazardous activities.
2. Such procedures may include recourse to international claims settlement procedures that are expeditious and involve minimal expenses.
3. To the extent necessary for the purpose of providing compensation in furtherance of draft principle 4, each State should ensure that its domestic administrative and judicial mechanisms possess the necessary competence and provide effective remedies to such victims. These mechanisms should not be less prompt, adequate and effective than those available to its nationals and should include appropriate access to information necessary to pursue such mechanisms.

Principle 7

Development of specific international regimes

1. States should cooperate in the development of appropriate international agreements on a global, regional or bilateral basis in order to make arrangements regarding the prevention and response measures to be followed in respect of particular categories of hazardous activities as well as the compensation and financial security measures to be taken.
2. Such agreements may include industry and/or State funded compensation funds to provide supplementary compensation in the event that the financial resources of the operator, including financial security measures, are insufficient to cover the losses suffered as result of an incident. Any such funds may be designed to supplement or replace national industry based funds.

Principle 8

Implementation

1. Each State should adopt any legislative, regulatory and administrative measures that may be necessary to implement the present draft principles.
2. The present draft principles and any implementing provisions should be applied without any discrimination such as that based on nationality, domicile or residence.
3. States should cooperate with each other to implement the present draft principles consistent with their obligations under international law.
