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INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING
OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

(PREVENTION OF TRANSBOUNDARY DAMAGE FROM HAZARDOUS ACTIVITIES)

Titles and texts of draft articles 1 to 17 on Prevention of
transboundary damage from hazardous activities adopted by
the Drafting Committee

Article 1

Activities to which the present draft articles apply

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

Article 2

Use of terms

For the purposes of the present articles:

(a) "risk of causing significant transboundary harm" encompasses a low probability of causing disastrous harm and a high probability of causing other significant harm;

(b) "harm" includes harm caused to persons, property or the environment;

(c) "transboundary harm" means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border;

(d) "State of origin" means the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in draft article 1 are carried out;

(e) "State likely to be affected" means the State in the territory of which the significant transboundary harm is likely to occur or which has jurisdiction or control over any other place where such harm is likely to occur.

Article 3[4]*

Prevention

States shall take all appropriate measures to prevent, or to minimize the risk of, significant transboundary harm.

Article 4[6]

Cooperation

States concerned shall cooperate in good faith and as necessary seek the assistance of one or more international organization in preventing, or in minimizing the risk of, significant transboundary harm.

Article 5[7]

Implementation

States shall take the necessary legislative, administrative or other action including the establishment of suitable monitoring mechanisms to implement the provisions of the present draft articles.

Article 6[8]

Relationship to other rules of international law

Obligations arising from the present draft articles are without prejudice to any other obligations incurred by States under relevant treaties or rules of customary international law.

* The number within square brackets indicates the number of the corresponding article proposed by the Working Group in 1996.

Article 7[9 and 11]

Prior authorization

1. The prior authorization of a State is required for activities within the scope of the present draft articles carried out in its territory or otherwise under its jurisdiction or control as well as for any major change in an activity so authorized. Such authorization shall also be required in case a change is planned which may transform an activity into one falling within the scope of the present draft articles.
2. The requirement of authorization established by a State shall be made applicable in respect of all pre-existing activities within the scope of the present draft articles.
3. In case of a failure to conform to the requirements of the authorization, the authorizing State shall take such actions as appropriate, including where necessary terminating the authorization.

Article 8[10]

Impact assessment

Any decision in respect of the authorization of an activity within the scope of the present draft articles shall be based on an evaluation of the possible transboundary harm caused by that activity.

Article 9[15]

Information to the public

States shall, by such means as are appropriate, provide the public likely to be affected by an activity within the scope of the present draft articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views.

Article 10[13]

Notification and information

1. If the assessment referred to in article 8[10] indicates a risk of causing significant transboundary harm, the State of origin shall, pending any decision on the authorization of the activity, provide the States likely to be affected with timely notification thereof and shall transmit to them the available technical and other relevant information on which the assessment is based.
2. The response from the States likely to be affected shall be provided within a reasonable time.

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Article 11[17]

Consultations on preventive measures

1. The States concerned shall enter into consultations, at the request of any of them, with a view to achieving acceptable solutions regarding measures to be adopted in order to prevent, or minimize the risk of, causing significant transboundary harm.
2. States shall seek solutions based on an equitable balance of interests in the light of article 12[19].
3. If the consultations referred to in paragraph 1 fail to produce an agreed solution, the State of origin shall nevertheless take into account the interests of States likely to be affected in case it decides to authorize the activity to be pursued at its own risk, without prejudice to the rights of any State likely to be affected.

Article 12[19]

Factors involved in an equitable balance of interests

In order to achieve an equitable balance of interests as referred to in paragraph 2 of article 11[17], the States concerned shall take into account all relevant factors and circumstances, including:

- (a) the degree of risk of significant transboundary harm and the availability of means of preventing such harm, or minimizing the risk thereof or of repairing the harm;
- (b) the importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the States likely to be affected;
- (c) the risk of significant harm to the environment and the availability of means of preventing such harm, or minimizing the risk thereof or restoring the environment;
- (d) the degree to which the States of origin and, as appropriate, States likely to be affected are prepared to contribute to the costs of prevention;
- (e) the economic viability of the activity in relation to the costs of prevention and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;
- (f) the standards of protection which the States likely to be affected apply to the same or comparable activities and the standards applied in comparable regional or international practice.

Article 13[18]

Procedures in the absence of notification

1. If a State has reasonable grounds to believe that an activity planned or carried out in the territory or otherwise under the jurisdiction or control of another State may have a risk of causing significant transboundary harm, the former State may request the latter to apply the provision of article 10[13]. The request shall be accompanied by a documented explanation setting forth its grounds.
2. In the event that the State of origin nevertheless finds that it is not under an obligation to provide a notification under article 10[13], it shall so inform the other State within a reasonable time, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations in the manner indicated in article 11[17].
3. During the course of the consultations, the State of origin shall, if so requested by the other State, arrange to introduce appropriate and feasible measures to minimize the risk and, where appropriate, to suspend the activity in question for a period of six months unless otherwise agreed.

Article 14[14]

Exchange of information

While the activity is being carried out, the States concerned shall exchange in a timely manner all available information relevant to preventing, or minimizing the risk of causing, significant transboundary harm.

Article 15[16]

National security and industrial secrets

Data and information vital to the national security of the State of origin or to the protection of industrial secrets may be withheld, but the State of origin shall cooperate in good faith with the other States concerned in providing as much information as can be provided under the circumstances.

Article 16[20]

Non-discrimination

Unless the States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who may be or are exposed to the risk of significant transboundary harm as a result of activities within the scope of the present draft articles, a State shall not discriminate on the basis

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of nationality or residence or place where the injury might occur, in granting to such persons, in accordance with its legal system, access to judicial or other procedures to seek protection or other appropriate redress.

Article 17

Settlement of disputes

1. Any dispute concerning the interpretation or application of the present draft articles shall be settled expeditiously through peaceful means of settlement chosen by mutual agreement of the parties, including submission of the dispute to mediation, conciliation, arbitration or judicial settlement.
2. Failing an agreement in this regard within a period of six months, the parties concerned shall, at the request of one of them, have recourse to the appointment of an independent and impartial fact-finding commission. The report of the commission shall be considered by the parties in good faith.
