Prevention of Transboundary Harm from Hazardous Activities
2001

Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10).
Prevention of Transboundary Harm from Hazardous Activities

The States Parties,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Bearing in mind the principle of permanent sovereignty of States over the natural resources within their territory or otherwise under their jurisdiction or control,

Bearing also in mind that the freedom of States to carry on or permit activities in their territory or otherwise under their jurisdiction or control is not unlimited,

Recalling the Rio Declaration on Environment and Development of 13 June 1992,

Recognizing the importance of promoting international cooperation,

Have agreed as follows:

Article 1

Scope

The present 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” includes risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm;

(b) “harm” means 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 article 1 are planned or are carried out;
(e) “State likely to be affected” means the State or States in the territory of which there is the risk of significant transboundary harm or which have jurisdiction or control over any other place where there is such a risk;

(f) “States concerned” means the State of origin and the State likely to be affected.

**Article 3**

*Prevention*

The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.

**Article 4**

*Cooperation*

States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.

**Article 5**

*Implementation*

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

**Article 6**

*Authorization*

1. The State of origin shall require its prior authorization for:

   (a) any activity within the scope of the present articles carried out in its territory or otherwise under its jurisdiction or control;

   (b) any major change in an activity referred to in subparagraph (a);

   (c) any plan to change an activity which may transform it into one falling within the scope of the present 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 articles. Authorizations already issued by the State for pre-existing activities shall be reviewed in order to comply with the present articles.

3. In case of a failure to conform to the terms of the authorization, the State of origin shall take such actions as appropriate, including where necessary terminating the authorization.
Article 7
Assessment of risk

Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

Article 8
Notification and information

1. If the assessment referred to in article 7 indicates a risk of causing significant transboundary harm, the State of origin shall provide the State likely to be affected with timely notification of the risk and the assessment and shall transmit to it the available technical and all other relevant information on which the assessment is based.

2. The State of origin shall not take any decision on authorization of the activity pending the receipt, within a period not exceeding six months, of the response from the State likely to be affected.

Article 9
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 significant transboundary harm or at any event to minimize the risk thereof. The States concerned shall agree, at the commencement of such consultations, on a reasonable time frame for the consultations.

2. The States concerned shall seek solutions based on an equitable balance of interests in the light of article 10.

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 the State likely to be affected in case it decides to authorize the activity to be pursued, without prejudice to the rights of any State likely to be affected.

Article 10
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 9, the States concerned shall take into account all relevant factors and circumstances, including:

(a) the degree of risk of significant transboundary harm and of the availability of means of preventing such harm, or minimizing the risk thereof or 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 State 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 State of origin and, as appropriate, the State 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 prevention which the State likely to be affected applies to the same or comparable activities and the standards applied in comparable regional or international practice.

Article 11
Procedures in the absence of notification

1. If a State has reasonable grounds to believe that an activity planned or carried out in the State of origin may involve a risk of causing significant transboundary harm to it, it may request the State of origin to apply the provision of article 8. 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 8, it shall so inform the requesting State within a reasonable time, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy that State, at its request, the two States shall promptly enter into consultations in the manner indicated in article 9.

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 reasonable period.

Article 12
Exchange of information

While the activity is being carried out, the States concerned shall exchange in a timely manner all available information concerning that activity relevant to preventing significant transboundary harm or at any event minimizing the risk thereof. Such an exchange of information shall continue until such time as the States concerned consider it appropriate even after the activity is terminated.

Article 13
Information to the public

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