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### REPORT OF THE WORKING GROUP ON THE TOPIC OF INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

1. The International Law Commission, at its 2273rd meeting on 16 June 1992, established a Working Group, open to any Member who wished to participate, to consider some of the general issues relating to the scope, the approach to be taken, and the possible direction of the future work on the topic.
2. The Working Group held five meetings from 16 to 23 June 1992.
3. At the conclusion of its work, the Working Group agreed to the following as its recommendations to the Commission:

#### A. Scope of the topic

4. The Working Group noted that the Commission, in the last several years of its work on this topic, has identified the broad area and the outer limits of the topic but has not yet made a final decision on its precise scope. In the view of the Working Group, such a decision at this time might be premature. The Working Group, however, recommends that, in order to facilitate progress on the subject, it would be prudent to approach its consideration within that broad area in stages and to establish priorities for issues to be covered.
5. Within the understanding set forth in paragraph 4 above, the Working Group recommends that the topic should be understood as comprising both issues of prevention and of remedial measures. However, priority should be given to prevention; only after having completed its work on that first part of the topic, would the Commission proceed to the question of remedial measures. Remedial measures in this context may include those designed for mitigation of harm, restoration of what was harmed and compensation for harm caused.

6. Attention should be focused at this stage on drafting articles in respect of activities having a risk of causing transboundary harm. In view of the recommendation contained in paragraph 5 above, the articles should deal first with preventive measures in respect of activities creating a risk of causing transboundary harm and then with articles on the remedial measures when such activities have caused transboundary harm. Once the Commission has completed consideration of the proposed articles on these two aspects of activities having a risk of causing transboundary harm, it will then decide on the next stage of the work, namely whether to continue with the same or a similar exercise in respect of activities causing transboundary harm.

B. The approach to be taken with regard to the nature of the articles or of the instrument to be drafted

7. In the view of the Working Group it would be premature to decide at this stage on the nature of either the articles to be drafted or the eventual form of the instrument that will emerge from the work of the Commission on this topic. It would be prudent to defer such a decision, in accordance with the usual practice of the Commission, until the completion of the work on the topic. The Commission should examine and adopt the articles proposed for this topic, in accordance with its usual practice, on the basis of the merits of the articles, their clarity and utility for the contemporary and future needs of the international community and their possible contribution to the promotion of the progressive development of international law and its codification in this area.

C. Title of the topic

8. In view of the ambiguity in the title of the topic as to whether it includes "activities" or "acts", the Working Group recommends that the Commission adopt as a working hypothesis that the topic deal with "activities". However, any formal change of the title should be deferred, for in the light of the further work on the topic additional changes in the title may be necessary. The Commission should therefore wait until it is prepared to make a final recommendation on the changes in the title.

D. Recommendation on the report of the Special Rapporteur for the next year

9. The Working Group took note of the previous reports of the Special Rapporteur in which the issues of prevention were examined in respect of both activities having a risk of causing and those causing transboundary harm. It recommends that for the next year, the Special Rapporteur in his report to the Commission, should re-examine the issues of prevention only in respect of activities having a risk of causing transboundary harm and propose a complete and a final set of draft articles to that effect.

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