

Document:-  
**A/CN.4/L.487**

**International liability for injurious consequences arising out of acts not prohibited by international law. Titles and texts of articles adopted by the Drafting Committee: articles 1, 2, 11, 12 and 14 - reproduced in document A/CN.4/SR.2318, para. 58**

Topic:  
**International liability for injurious consequences arising out of acts not prohibited by international law**

Extract from the Yearbook of the International Law Commission:-  
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(<http://www.un.org/law/ilc/index.htm>)*

53. Mr. YANKOV requested that the report of the Drafting Committee should be reproduced *in extenso* in the summary record of the meeting.

54. The CHAIRMAN said that, in his understanding, the debate that had just taken place indicated that the Commission wished to take note of the Drafting Committee's report (A/CN.4/L.480 and Add.1) and to postpone the adoption of the draft articles contained therein until the next session.

*It was so decided.*

**International liability for injurious consequences arising out of acts not prohibited by international law (concluded)\* (A/CN.4/446, sect. D, A/CN.4/450)<sup>21</sup> (A/CN.4/L.487)**

[Agenda item 5]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

55. The CHAIRMAN, speaking as Special Rapporteur on the topic of international liability for injurious consequences arising out of acts not prohibited by international law, said that, although both the draft articles on State responsibility and the draft articles proposed by the Drafting Committee in the report under consideration (A/CN.4/L.487) were not accompanied by commentaries, the reasons for the lack of commentary were different in each case. He had not drafted commentaries, not because of lack of time or willingness, but because of the particular features of the chapter on prevention and in order to take account of the views of the members of the Commission who had stated that they preferred to have a general view of the articles on prevention before adopting them. He would submit commentaries at the next session if the Drafting Committee had completed its consideration of the articles on prevention.

56. Mr. MIKULKA (Chairman of the Drafting Committee), introducing the report of the Drafting Committee, noted that the Commission had decided at its forty-fourth session to approach the topic step by step and to consider, first, articles dealing with preventive measures for activities with a risk of transboundary harm.<sup>22</sup> When the Commission had referred articles 10 to 20 *bis* to the Drafting Committee at the current session, it had indicated that the Drafting Committee, with the help of the Special Rapporteur, could play a role that went beyond a simple drafting exercise. It could consider the scheme of the new articles and then begin actual drafting.

57. With that understanding, the Drafting Committee had first considered the general scheme of the draft. For that purpose, it had considered all the articles before it, namely, articles 1 to 5 (General provisions) and 6 to 10 (Principles),<sup>23</sup> as well as articles 11 to 20 *bis* (Preven-

tion) proposed by the Special Rapporteur in his ninth report (A/CN.4/450). It had concluded that, in order for the articles on prevention to be independent and coherent, there should be, above all, an article on the scope, defining the activities to which preventive measures applied. Then, the three terms that were essential to the formulation of a working hypothesis should be defined; those terms were "risk of causing significant transboundary harm", "transboundary harm" and "State of origin". The Drafting Committee had therefore worked on article 1 (Scope of the present articles) and article 2 (Use of terms) and had then moved on to the consideration of the articles on preventive measures.

58. The titles and texts of articles 1, 2, 11, 12 and 14 as adopted by the Drafting Committee read as follows:

*Article 1. Scope of the present articles*

The present articles apply to activities not prohibited by international law and carried out in the territory or otherwise under the jurisdiction or control of a State which create 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) "transboundary harm" means harm caused in the territory of or in 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;

(c) "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 carried out.

...

...

*Article 11. Prior authorization*

States shall ensure that activities referred to in article 1 are not carried out in their territory or otherwise under their jurisdiction or control without their prior authorization. Such authorization shall also be required when a major change in the activity is planned.

*Article 12. Risk assessment*

Before taking a decision to authorize an activity referred to in article 1, a State shall ensure that an assessment is undertaken of the risk of the activity causing significant transboundary harm. Such an assessment shall include an evaluation of the possible impact of that activity on persons or property as well as on the environment of other States.

...

*Article 14. Measures to minimize the risk*

States shall take legislative, administrative or other actions to ensure that all necessary measures are adopted to minimize the risk of transboundary harm of activities referred to in article 1.

\* Resumed from the 2306th meeting.

<sup>21</sup> Reproduced in *Yearbook* . . . 1993, vol. II (Part One).

<sup>22</sup> See *Yearbook* . . . 1992, vol. II (Part Two), p. 51, paras. 345-346.

<sup>23</sup> For the texts of draft articles 1 to 10, see *Yearbook* . . . 1990, vol. II (Part One), pp. 105-106, document A/CN.4/428 and Add.1, annex.