

Principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities

UN General Assembly Resolution 61/36

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The General Assembly,

Aware that incidents involving hazardous activities may occur despite compliance by the relevant State with its obligations concerning 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 loss,

Emphasizing that appropriate and effective measures should be in place to ensure that those natural and legal persons, including States, that incur harm and loss as a result of such incidents are able to obtain prompt and adequate compensation [announced the following principles:]

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Principle 1—Scope of Application

The present draft principles apply to transboundary damage caused by hazardous activities not prohibited by international law.

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Principle 3—Purposes

The purposes of the present draft principles are:

(a) to ensure prompt and adequate compensation to victims of transboundary damage; and

(b) to preserve and protect the environment in the event of transboundary damage, especially with respect to mitigation of damage to the environment and its restoration or reinstatement.

Principle 4—Prompt and Adequate Compensation

1. Each State should take all 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 shall 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.

Principle 5—Response Measures

Upon the occurrence of an incident involving a hazardous activity which results or is likely to result in transboundary damage:

(a) the State of origin shall promptly notify all States affected or likely to be affected of the incident and the possible effects of the transboundary damage [likely associated with the delay in reporting the 1986 Chernobyl nuclear accident];

(b) the State of origin, with the appropriate involvement of the operator, shall ensure that appropriate response measures are taken and should, for this purpose, rely upon the best available scientific data and technology;

(c) the State of origin, as appropriate, should also consult with and seek the cooperation of all States affected or likely to be affected to mitigate the effects of transboundary damage and if possible eliminate them;

...

(e) the States concerned should, where appropriate, seek the assistance of competent international organizations and other States on mutually acceptable terms and conditions.

Principle 6—International and Domestic Remedies

1. States shall provide their domestic judicial and administrative bodies with the necessary jurisdiction and competence and ensure that these bodies have prompt, adequate and effective remedies available in the event of transboundary damage caused by hazardous activities located within their territory or otherwise under their jurisdiction or control.

2. Victims of transboundary damage should have access to remedies in the State of origin that are no less prompt, adequate and effective than those available to victims that suffer damage, from the same incident, within the territory of that State.

3. Paragraphs 1 and 2 are without prejudice to the right of the victims to seek remedies other than those available in the State of origin.

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