General Assembly Sixth Committee

**Topic B: Prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm**

“Our population and our use of the finite resources of planet Earth are growing exponentially, along with our technical ability to change the environment for good or ill.”

– Stephen Hawking

**Topic Background**

The evolution political boundaries help define the current paradigm of globalization that we have witnessed over the past half century. These boundaries help define recognized political establishments and help structure administration and application of law on national, regional, and international levels. This system has however become very integrated and complicated due to globalization. Moreover, the actions of certain states, in regards to how they decide to act within their own borders, could directly or indirectly harm neighboring states within the region. Given that Member States often have sovereignty over their territory and resources, this calls into question how to address in border activities that could harm neighbors.

The use of natural resources best conceptualizes this issue because of their transboundary nature and the fact that many territories depend on their exploitation to improve national livelihood. For example, a country deciding to build a dam for hydroelectric power could adversely impact other countries who receive downstream currents from that same river. Thus transitioning into the context of the topic, the application and use of natural resources can potentially harm neighboring territories or others within the region. This remains just one example as there are many other considerations of what constitutes as transboundary harm. Considering that national decisions are left up to State sovereignty, codifying international law regarding this topic has become of increasing importance.¹

**International Law Commission**

Preventing transboundary harm from hazardous activities has been an issue that has been discussed within the General Assembly 6th Committee since the past few decades. Given that sovereignty over borders and natural resources has long been a norm within the international community, addressing harmful activities that can spill into other borders becomes legally

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complicated. The topic historical has been handled in two separate clusters: Prevention of transboundary harm and liability for injuries or losses from cases of such harm.²

*Draft Articles*

In 1978 the International Law Commission, at the request of the General Assembly, included “International liability for injurious consequences arising out of acts not prohibited by international law” within its programme of work. It not until 1997 when the Commission decided to act on the topic by first addressing “Prevention of transboundary damage from hazardous activities.” The resulting work was completed in 2001 where the draft articles prevention of transboundary damage from hazardous activities. In the fifty-sixth session, the General Assembly adopted the draft article and recommended the International Law Commission to further consider work on the liability aspect of the topic.

*Draft Principles*

The Commission successfully completed its work in 2006 by adopting the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. The resulting work led to the General Assembly to commend the work of the international law commission and to further consider the topics in future agendas. Having two draft instruments to work with, the General Assembly decided, in its sixty first session, to combine both topics together and place it on the agenda of the sixty second session as “Prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm.”³

*Current Situation*

*Draft articles on the prevention of transboundary damage from hazardous activities*

The Draft Articles were adopted by the International Law Commission as a means towards establishing framework on the first aspect of the topic. Composed of 19 articles, the text aims to highlight definitive issues and how states are to legally act when an incident arises. The first articles discuss how states are to cooperate and implement the proposed measures within the text. Furthermore, the scope of the articles emphasizes that the acts of harm being discussed are those not prohibited by existing international law. Issues regarding sharing of information, transparency towards the public and national security are discussed within the central articles and constitute as the bulk of the text.⁴

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⁴ International Law Commission. Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries.
Overall, the Draft Articles aim to take a proactive approach towards designing legal methods to prevent harm that would cross borders. Articles most notably emphasize the sharing and exchange of information on activities that could pose as potential threats so the states concerned can cooperate and prevent a harmful incident from arising. Though not legally binding, it is very possible for many states to use the Draft Articles as framework for implementing legislation on prevention of transboundary harm.⁵

**Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities**

Sharing similarities to the Draft Articles, the Draft Principles lay out a set of provisions that are recommended for harmful incidents that have already taken place. The main purpose of the principles is to design a structure that could provide responsive measures to mitigate harm that has already taken place. These articles are defined as principles because they are designed to deliver brief points regarding existing customary norms. As with the Draft Articles, the Draft Principles emphasizes in its scope that the provisions apply to cases of transboundary harm not currently prohibited by international law.⁶

Victims are portrayed as the main topic of concern to ensure that any harm done to them is account for. This is shown the focus on the responsive measures and compensation during incidents of transboundary harm. Moreover, the draft principles, in article 7, encourages Member States to design and implement their own regimes, on regional and international levels, regarding compensating victims of transboundary harm. This language emphasizes that the draft principles currently serve a guiding purpose towards enhancing cooperation.⁷

**Legality of prevention of transboundary harm and allocation of loss**

Since the combination of topics in the Sixth Committee Agenda, Member States have taken due time to consult the provisions of the Draft Articles and Draft Principles with their national authorities. The reasoning behind this consultation is to identify concerns or ambiguities within the text so as to assure that proper discussion on implementing can continue without problems. In the most recent session of the General Assembly, sixty eight session, considerable work and progress was made regarding the status of both the Draft Articles and the Draft Principles.

Most Member States welcomed the work of the International Law Commission and pledged to take further steps regarding implementation of the provisions. Most notably, a number of

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⁵ International Law Commission. *Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries.*

⁶ International Law Commission. *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.*

⁷ International Law Commission. *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.*
delegates have even stated that the current text constitutes as authoritative measures since it can be referenced during adjudication of disputes. Moreover, it also was viewed as a potential method to also work congruently with current climate change efforts in preserving ocean beds.

**Future Outlook**

What is most striking about the current deliberations is that many Member States are beginning to call for a single convention on the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm. Such a task has been proven to take a considerable amount of time due to the on-going consultations with both the Draft Articles and the Draft Principles. Other Member States have argued that such a move is premature and could hamper current efforts to perfect existing text. Additionally, the question remains if such a convention would include the existing text of the Draft Articles and Draft Principles or if certain Member States would object to certain existing provisions. 8

**Focus Questions:**

1. Has your country ever been involved in a transboundary harm disputes? What side was it on?

2. Is your country developing any multilateral or bilateral agreements regarding transboundary harm?

3. Does your country support a single convention the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm?

4. What has your country done thus far to prevent transboundary harm?

5. Is your country at high risk of undertaking transboundary harm?

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Works Cited


