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INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING
OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

Report of the Working Group

1. Pursuant to paragraph 6 of General Assembly resolution 51/160, the International Law Commission at its 2482nd meeting on 26 May established a Working Group 1/ to consider the question of how the Commission should proceed with its work on this topic and to make recommendations to the Plenary to that effect.

2. The Working Group held two meetings from 2 to 13 June. It had before it the report of the 1996 Working Group of the Commission on international liability for injurious consequences arising out of acts not prohibited by international law 2/; the Topical summary of the discussion held in the Sixth Committee at its fifty-first session 3/; and written comments submitted by Governments. 4/

1/ Mr. C. Yamada (Chairman), Mr. E. Addo, Mr. E. Candioti, Mr. L. Ferrari Bravo, Mr. G. Hafner, Mr. Q. He, Mr. J. Kateka, Mr. I. Lukashuk, Mr. T. Melescanu, Mr. G. PambouVTchivounda, Mr. P. Rao, Mr. B. Simma, and Mr. Z. Galicki (Ex officio).

2/ See Official Records of the General Assembly, Fiftyvfirst Session, Supplement No. 10, (A/51/10), Annex I.

3/ A/CN.4/479, section C.

4/ A/CN.4/481 and Add.1

3. The Working Group reviewed the work of the Commission on the topic since 1978. It noted that the scope and the content of the topic remained unclear due to such factors as conceptual and theoretical difficulties, appropriateness of the title and the relation of the subject to AState responsibility. The Working Group further noted that the Commission had dealt with two issues under the topic: Aprevention and Ainternational liability. In the view of the Working Group, these two issues are distinct from one another, though relates. The Working Group therefore agreed that henceforth the issues of prevention and of liability should be dealt with separately.

4. The Working Group noted that the work of the Commission on Aprevention was already at an advanced stage and that many of the articles in that area had been provisionally adopted by the Commission. In the view of the Working Group, the Commission is now well placed to proceed with the work and possibly the completion of the first reading of the draft articles on Aprevention in the next few years. The Working Group also believes that any decision on the form and nature of the draft articles on Aprevention should be decided at a later stage.

5. In the Working Group, it was widely viewed with some differing shades that Ainternational liability is the core issue of the topic as originally conceived and that the Commission should retain this subject. At the same time, it was agreed that the Commission needs to await further comments from the Governments before it can make any decision on the issue. It was also noted that the title of the topic might need adjustment depending on the scope and contents of the draft articles.

6. The Working Group accordingly recommends to the Commission that:

(a)The Commission should proceed with its work on Aprevention under the sub-title Aprevention of transboundary damage from hazardous activities. A Special Rapporteur for this sub-title should be appointed as soon as possible with the aim of completing the first reading of the draft articles by 1999.

(b)The Commission should defer its decision on the Ainternational liability aspect of the topic pending further comments by Governments in the Sixth Committee or in writing. Accordingly, the Commission should request for comments by Governments if they have not yet done so on this aspect to assist the Commission in making a decision in this regard.