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GROUP OF THE FRIENDS OF THE CO-CHAIRS ON
LIABILITY AND REDRESS IN THE CONTEXT OF
THE CARTAGENA PROTOCOL ON BIOSAFETY
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Item 3 of the provisional agenda*

RECENT DEVELOPMENTS IN INTERNATIONAL LAW RELATING TO LIABILITY AND REDRESS, INCLUDING THE STATUS OF INTERNATIONAL ENVIRONMENT-RELATED THIRD PARTY LIABILITY INSTRUMENTS

Note by the Executive Secretary

I. INTRODUCTION

1. This information document is prepared in line with Article 27 of the Biosafety Protocol, which requires the process of the elaboration of international rules and procedures on liability and redress to take into account and to benefit from analysis of other relevant ongoing processes in international law.

2. Information on developments in international law relating to liability and redress has been gathered, analysed and updated by the Secretariat since the earlier phase of the process. The present note, therefore, updates the information gathered and made available for the last meeting of the Group of the Friends of the Co-Chairs on Liability and Redress (UNEP/CBD/BS/GF-L&R/1/INF/1). As has been the practice in the past, the information on the status of international environment-related third-party liability treaties is presented in the form of a table annexed to this document.

II. RECENT DEVELOPMENTS IN INTERNATIONAL LAW RELATING TO LIABILITY AND REDRESS, INCLUDING "SOFT LAW"

3. This section presents a summary of recent developments in the field of liability and redress within the processes of some multilateral and regional environmental agreements, and regional or global organizations or arrangements that have some ongoing work, provisions or cases relevant to the field.

A. United Nations Environment Programme (UNEP)

4. The twenty-fifth session of the Governing Council/Global Ministerial Environment Forum was held in Nairobi from 16 to 20 February 2009. The "Draft guidelines for the development of national legislation on liability and compensation for damage caused by activities dangerous to the environment"

* UNEP/CBD/BS/GF-L&R/2/1.

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further developed by the consultative meeting of Government officials and experts held on 18 and 19 of June 2008, was submitted for the consideration of and adoption by the Governing Council.[1]

5. Following the consultative meeting, the guidelines were revised based on comments received in response to UNEP's invitation to Governments and other stakeholders to provide comments. According to the revised guidelines that were submitted to the twenty-fifth session of the Governing Council, the scope has been broadened to include "response action" Accordingly, the title of the draft was adjusted as "Draft guidelines for the development of national legislation on liability, response action and compensation for damage caused by activities dangerous to the environment". The objective of the guidelines is no longer to provide an "effective regime" on liability and compensation, but to provide "guidance" to States regarding domestic rules on liability, response action and compensation for damage" (Guideline 1).[2]

6. The Governing Council took note of the draft guidelines and requested the secretariat to carry out further work with a view to their adoption by the Governing Council/Global Ministerial Environment Forum at its next special session.[3] Following the session and in accordance with the mandate given, UNEP continued making improvements on the draft guidelines based on further comments.[4]

7. An advisory expert meeting was convened by UNEP in September 2009 to reflect on the comments and suggestions received and to ensure that their incorporation did not lead to inconsistencies. Furthermore, an intergovernmental meeting was held in Nairobi from 9 to 11 November 2009 to review and further develop the draft guidelines.

8. Some of the revisions made to the draft include changes in the use of certain terms. The term "national" was replaced by "domestic" in the title of the draft guidelines. The term "activity dangerous to the environment", was previously linked to any activity involving any of the hazardous substances or activities referred to in two predetermined annexes to the guidelines. The reference to the two annexes was later replaced by a reference to "guideline 14", a newly included guideline. Accordingly, the term "activity dangerous the environment" meant "an activity or installation specifically defined under domestic law in accordance with guideline 14". However this has further evolved and the reference to guideline 14 is dropped again from the current draft (Guideline 3, paragraph 1).

9. The term "damage" was further defined to mean loss of life or personal injury and loss of or damage to property "arising from environmental damage" (Guideline 3, paragraphs 2 (a) and (b)).

10. The definition of 'operator' was stated in the previous draft as "the person or persons/entity or entities in operational control of the activity, or any part thereof". According to the latest version 'operator' is "any person or persons, entity or entities in command or control of the activity, or any part thereof at the time of the incident" (guideline 3, paragraph 4). "Incident" is defined to mean "any occurrence or series of occurrences having the same origin that cause damage or create a grave and imminent threat of damage" (guideline 3, paragraph 5).

11. The term "pure economic loss" is specified to mean "loss of income, unaccompanied by personal injury or damage to property, directly deriving from an economic interest in any use of the environment and incurred as a result of environmental damage" (guideline 3, paragraph 7). According to this change, a

[1] The key elements of the draft guidelines as further developed by the consultative meeting of Government officials and experts (UNEP/Env.Law/CM/1/2), held in Nairobi, on 18 and 19 June 2008 were outlined in doc. UNEP/CBD/BS/GF-L&R/1/INF/1

[2] Draft Guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment, UNEP/GC.25/INF/15/Add.3

[3] Decision 25/11 (part III) of the Governing Council: http://www.unep.org/gc/gc25/Docs/Proceedings-English.pdf

[4] See "Draft guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment", Annex, UNEP/Env.Law/IGM.Lia/2/2, 9 October 2009. This is the version that was available and used for the preparation of this information document.

claimant has to show not only that the economic loss allegedly incurred was a result of an environmental damage but also the existence of an economic interest in any use of the environment. The draft as currently revised suggests also that domestic law may recognize the compensability of environmental damage (Guideline 8, paragraph 2).

12. A new paragraph is inserted in Guideline 10 suggesting that States may consider alternative compensation mechanisms such as special funding or collective compensation schemes through domestic law in order to fill potential compensation gaps where the operator is unable to meet his or her liability or where the damages exceed the operator's limit of liability (paragraph 2).

13. The indicative time limits for admissibility of claims for compensation included in the previous draft have been removed and replaced by a general recommendation for domestic law to establish the inadmissibility of claims unless they are brought "within a certain period of time" from the date the claimant knew or ought to have known of the damage and the identity of the operator. It is also recommended that claims should be barred unless brought within a certain period of time (absolute time limit) following the occurrence of the damage (Guideline 12, paragraph 1).[5]

14. Exoneration for third party conduct stated in paragraph 1(c) of Guideline 6, is further elaborated to suggest that the operator may be exonerated in the case of claims for compensation "only if the damage caused was wholly the result of wrongful intentional conduct of a third party, including the person who suffered the damage". According to the advance copy of the report of the intergovernmental meeting,[6] an additional paragraph 6 *bis* was proposed to be included after Guideline 6 in the draft. The newly proposed text refers to exoneration from liability when (i) there is "express authorization" of the activity that has allegedly caused the damage[7] and (ii) the state of scientific and technical knowledge at the time the damage occurred shows that the activity was not likely to cause damage. The representatives could not reach consensus and therefore, agreed to insert a footnote that states "Some Governments reserve the right to return to the text of the present guideline" and the proposed paragraph was placed under square brackets.

15. Similarly participants at the intergovernmental meeting requested the insertion of a footnote that reserves their right to return to Guideline 14 and related annexes which they believed was an entirely new text that needed further reflection. Guideline 14 recommends for domestic law to provide exhaustive lists of activities or installations dangerous to the environment, and suggests some existing lists that may be taken into account. Various additional proposals were also made in connection to paragraph 3 of Guideline 14 concerning illustrative samples of list of hazardous substances and examples of hazardous substances, attached to the commentary to the draft guidelines as annexes I and II, which may be taken into account by domestic lawmakers when they draw up their own lists of activities or installations dangerous to the environment.. Nevertheless, representatives were not able to reach consensus and therefore agreed that the suggestions made would be recorded in the report of the meeting and that the original paragraph in the draft guidelines would be placed within square brackets.

16. The intergovernmental meeting finally decided to forward the revised draft guidelines to the Governing Council for its possible adoption at its upcoming meeting in February 2010. A suggested outline of action for the consideration of the Governing Council has also been prepared by the

[5] The specific time limits of barring claims after five years from the date the claimant knew or ought to have known the damager and the identity of the operator, and 10-30 years, in any case, following the occurrence of the damage are, however, still retained in the commentary that accompany the draft guidelines in document UNEP/Env.Law/IGM.Lia/2/2, 9 October 2009, as reference to what domestic law typically provides for in this regard.

[6] Report of the intergovernmental meeting to review and further develop draft guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment UNEP/GCSS.XI/INF/6/Add.1. The draft guidelines text attached to this report as Annex I is the text taken as "current" version and used in the preparation of this information document.

[7] This element was paragraph 1(e) of Guideline 6 in an earlier version of the draft guidelines (UNEP/GC.25/INF/15/Add.3).

intergovernmental meeting.[8] In the meantime, the draft text is expected to be submitted by UNEP to the Committee of Permanent Representatives to UNEP for its review and onward transmission to the Governing Council, as appropriate.[9]

B. Barcelona Convention for the Protection of the Mediterranean Sea against Pollution ("Barcelona Convention")

17. The working group of legal and technical experts established by the fifteenth meeting of the Contracting Parties to the Barcelona Convention to facilitate and assess the implementation of the Guidelines adopted by the Parties for the determination of liability and compensation for damage resulting from pollution of the marine environment of the Mediterranean Sea area, held its third meeting[10] in Athens on 22 and 23 January 2009.

18. The objectives of the meeting were:

(a) To discuss general issues related to liability and compensation regimes applied at the Contracting Party level, achievements, difficulties and challenges;

(b) To draft and agree on a programme of work based on the priority needs of the Contracting Parties with a view to promoting and facilitating the implementation of the Mediterranean Action Plan (MAP) Guidelines on Liability and Compensation at the regional, sub-regional and domestic levels, as appropriate; and

(c) To induce a debate on possible future developments with regard to further strengthening of the liability and compensation regime established under the Barcelona Convention/MAP. [11]

19. In the view of the Working Group, the Guidelines constitute "an appropriate set of rules and procedures, as required by Article 16 of the Barcelona Convention, for the establishment of a liability and compensation regime in the Mediterranean. The development of a legally binding regime, which may take the form of a Protocol, could be considered in the longer term."[12] The Group held that a broad consensus on issues was necessary in order for the Guidelines to be implemented. Although some concepts were globally accepted, such as the polluter pays principle, others still required further time and discussion for them to be developed. It was noted that the guideline on compulsory insurance, for example, would require a review of the means of implementation of an insurance scheme to be carried out five years after the adoption of the Guidelines. It was mentioned, however, that this did not mean that "the Guidelines should be applied *à la carte*, leaving out those which did not suit a particular national situation. Even though they were not binding, the Guidelines constituted an integrated whole and the intention was to move towards the establishment of a coherent and comprehensive liability and compensation regime in the Mediterranean. Each Contracting Party would, therefore, need to examine the extent to which its law

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[8] Report of the intergovernmental meeting to review and further develop draft guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment UNEP/GCSS.XI/INF/6/Add.1, annex III.

[9] *Ibid.* paragraph 23, section V.

[10] This working group seems to be the same group that was established by the Contracting Parties at their 14th meeting held in Portoroz, Slovenia, in November 2005 and that has been involved in the development of the guidelines since.

[11] Third meeting of the Working Group of Legal and Technical Experts for the implementation of Guidelines for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area Athens, Greece, 22-23 January 2009. Doc UNEP(DEPI)/MED WG 329/4 at para 4. http://195.97.36.231/acrobatfiles/09WG329_4_eng.pdf

[12] *Ibid*, annex IV ("Draft Conclusions").

and practice was in conformity with the principles set out in the Guidelines with a view to achieving the highest possible level of coherence".[13]

20. The Working Group also concluded that a gradual concerted approach was necessary in the implementation of the Guidelines to ensure the building of required capacities. Finally, the Group maintained that further research was needed into "the international instruments respecting liability and compensation that are most relevant to the situation in the Mediterranean; the constraints that have prevented countries from ratifying them more widely; and the areas that are not covered by such instruments, but which lie within the scope of the Barcelona Convention and its Protocols and should therefore be covered by a Mediterranean liability and compensation regime; the development of means to ensure effective access to information by the public, the evaluation of the products available in the insurance market and a feasibility study for a compensation fund." [14]

21. The Working Group also discussed the reporting format on the implementation of the MAP Liability and Compensation Guidelines and agreed that the Secretariat would be requested to prepare a reporting format based on the questionnaire, taking into account the views expressed. The reporting format was to be based on a questionnaire that had been sent out to Parties regarding their national rules on liability and compensation. It further elaborated a draft programme of work to facilitate the implementation of the MAP Guidelines on Liability and Compensation. The Working Group also agreed to propose that its mandate should continue over the next biennium.

22. A draft decision, including the reporting format and the suggested programme of work, was submitted to the meeting of MAP Focal Points, held in Athens, Greece from 7 to 10 July 2009. Following discussion, the Focal Points approved the draft decision and included it, with the other documents, in Annex V to the meeting report with a view to its further consideration and approval by the 16th Meeting of the Contracting Parties.[15]

23. The 16th Meeting of the Contracting Parties was held from 4 to 6 November 2009 in Marrakesh, Morocco. The meeting adopted the proposed format for reporting on the implementation of the Guidelines; approved the Programme of Action to facilitate the implementation of the Guidelines, decided to extend the mandate of the Working Group of Legal and Technical Experts for the biennium 2010-2011; and invited the Contracting Parties to cooperate and provide support to facilitate the implementation of the Guidelines, as appropriate. [16] The Parties did not agree, however, that the Working Group should undertake feasibility studies for a Mediterranean compensation fund or a compulsory insurance regime. [17]

C. Antarctic Treaty System

24. The Thirty-first Antarctic Treaty Consultative Meeting (ATCM) was held in Kiev in June 2008. The Parties considered progress being made in implementing domestic legislation regarding Annex VI on

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[13] *Ibid* at para 22.

[14] *Ibid* at "Draft conclusions"

[15] Report of the Meeting of the Map Focal Points, UNEP(DEPI)/MED WG 337/20, Annex V, Athens, Greece, 7-10 July 2009, http://195.97.36.231/acrobatfiles/09IG19_Inf13_Eng.pdf.

[16] Decision IG.19/3 Implementation of and reporting on Guidelines for the determination of Liability and Compensation for damages resulting from pollution of the Marine Environment in the Mediterranean Sea area, Report of the 16th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, UNEP(DEPI)/MED IG.19/8, 24 November 2009.

[17] Report of the 16th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, document UNEP(DEPI)/MED IG.19/8 (24 November 2009) at para. 26.

'Liability arising from Environmental Emergencies' adopted by Decision 1 in 2005. The Meeting welcomed reports from many countries on the progress in the implementation of Annex VI.[18]

25. The Parties met again in April 2009 in Baltimore, United States, for the Thirty-second Antarctic Treaty Consultative Meeting. The Meeting marked the 50th anniversary of the signing of the Treaty, the conclusion of the International Polar Year and for the first time, the inclusion of the Arctic Council in the Antarctic Treaty Consultative Meeting, represented by Norway, the current Chair of the Council. At the meeting, it was reported that the U.S Administration has sent, on April 3, 2009, the Annex on Liability to the Environment Protocol to the Antarctic Treaty (Annex VI) to the U.S. Senate for its approval for ratification.[19]

26. The Meeting congratulated Poland and Spain for approving Annex VI since the previous ATCM and noted the reported progress in many countries in drafting legislation to implement the Liability Annex. A United Kingdom government representative announced that a new bill on Antarctica to implement the Annex on Liability was to be introduced in Parliament.[20]

27. The Thirty-third Antarctic Treaty Consultative Meeting (ATCM XXXIII) is to be held in Punta del Este, Uruguay, from 3 to 14 May 2010. As usual, implementation of the Liability Annex is to be considered under Item 8 of the agenda.

D. International Civil Aviation Organization (ICAO)

28. In accordance with the decision of the ICAO Council made at the sixth meeting of its 184th session, held on 23 June 2008, a diplomatic conference (the International Conference on Air Law) was convened at the ICAO Headquarters in Montreal from 20 April to 2 May 2009 to finalize and adopt the texts of two draft conventions: the *Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft* (Unlawful Interference Compensation Convention) and the *Convention on Compensation for Damage Caused by Aircraft to Third Parties* (General Risks Convention). In the run up to the International Conference, the ICAO Legal Affairs and External Relations Bureau organized three regional preparatory seminars with a view to raising awareness about the two draft conventions. The seminars were held in Cairo, Egypt from 18 to 19 February 2009; Paris, France from 25 to 26 March 2009; and Incheon, Korea from 30 March to 2 April 2009.

29. The International Conference on Air Law adopted the texts of the two conventions on 2 May 2009, the last day of the Conference. Both instruments were opened for signature on the same date [21]. The Conference also passed a resolution relating to the establishment of the International Civil Aviation Compensation Fund provided for under the Unlawful Interference Compensation Convention. [22]

30. The Conventions will enter into force once they are ratified by at least 35 participating countries, all of which are required to have had at least 750 million passengers depart from the country in the previous year. The key features of the two conventions as adopted are recapped in the table below.

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[18] Item 8 in the " Final Report of the Thirty-first Antarctic Treaty Consultative Meeting

[19] Final Report of the Thirty-second Antarctic Treaty Consultative Meeting, Item I, Part I. http://www.ats.aq/documents/atcm_fr_images/ATCM32_fr001_e.pdf

[20] Statement by Gillian Merron, MP, Parliamentary Under-Secretary of State, Foreign & Commonwealth Office, United Kingdom at ATCM XXXII.

[21] FINAL ACT of the International Conference on Air Law held under the auspices of the International Civil Aviation Organization at Montreal from 20 April to 2 May 2009

[22] FINAL ACT, Resolution No. 2.

SALIENT FEATURES OF THE TWO CONVENTIONS AS ADOPTED ON 2 MAY 2009

Unlawful Interference Compensation Convention[23]	***General Risks Convention***[24]
Applies to damage to third parties which occurs in a territory of a State Party caused by an aircraft on an international flight as a result of unlawful interference. In certain cases it can also apply to such damage that occurs in a State non-Party. There is a possibility for application in essentially domestic situations (Article 2)	Applies to damage to third parties which occurs in a territory of a State Party caused by an aircraft on an international flight other than as a result of unlawful interference. It is possible for a State to declare that the Convention applies to its domestic flights too. (Article 2)
The liability of the operator to compensate is strict as long as the damage was caused by an aircraft in flight. No need for the claimant to prove fault (Article 3)	The operator is liable for damage sustained by third parties as long as the damage is caused by an aircraft in flight. The liability is strict- and fault-based. (Article 3)
The operator's liability is limited or capped, based on the weight of the aircraft, ranging from 750, 000 Special Drawing Rights (SDRs) for the smallest aircraft to 700 000 000 SDRs for the largest aircraft (Article 4)	The operator is liable for each event based on the weight of the aircraft, ranging from 750, 000 Special Drawing Rights (SDRs) for the smallest aircraft to 700 000 000 SDRs for the largest aircraft. These limits only apply if the operator proves that it was not negligent or the damage was caused solely due to the negligence of another person. (Article 4)
It is envisaged to create an organization called the International Civil Aviation Fund for the purpose of paying compensation to persons suffering damage, providing financial support where an operator from a State Party causes damage in a State non-Party, and deciding whether to provide supplementary compensation to passengers on board an aircraft involved in an event (Article 8). The operator pays up to the level of its cap, and the Fund will pay additional compensation above and beyond the level of the cap. If insurance is unavailable, or is available at a cost incompatible with the continued operation of air transport, the Fund may pay the damages (Article 18). The maximum amount of compensation that would be available from the Fund is set at 3 billion SDRs for each event. Contributions to the Fund are mandatory amounts collected in respect of each passenger and each tonne of cargo departing on an international commercial flight from an airport in a State Party. (Article 12) Any action for compensation under this Convention can only be brought against the operator or the Fund subject to the conditions and limits of liability in the Convention. The operator has the right of recourse against any person who has committed, organized or financed the act of unlawful interference, and also against any other person. (Article 24). There is no right of recourse against an owner, lessor or financier of the aircraft which is not an operator, or against a manufacturer in certain circumstances (Article 27) Actions may be brought in a single forum – before the courts of the State Party where the damage occurred (Article 32) Judgements shall, when they are enforceable in the State Party of that court, be enforceable in any other State Party, although recognition and enforcement of a judgement may be refused under certain circumstances (Article 34)	Any action against the operator for compensation for damage to third parties can only brought subject to the conditions in the Convention (Article 12). The owner, lessor or financier of an aircraft, not being an operator, is not liable under the Convention or under the domestic law of States Parties (Article 13). Actions for compensation may be brought in a single forum only, i.e. before the courts of the State Party where the damage occurred (Article 16) Judgements shall, when they are enforceable in the State Party of that court, be enforceable in any other State Party, although recognition and enforcement of a judgement may be refused under certain circumstances (Article 17)

[23] Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft, done at Montreal on 2 May 2009 (Doc 9920)

[24] Convention on Compensation for Damage Caused by Aircraft to Third Parties, done at Montréal on 2 May 2009 (Doc 9919)

E. International Court of Justice

31. In May 2006, Argentina initiated proceedings against Uruguay at the International Court of Justice (ICJ). Argentina alleges that Uruguay breached its obligations under the *Statute of the River Uruguay*, which was signed by the two countries in 1975. The action by Argentina was prompted by Uruguay's authorization of the construction of two pulp mills near the river as well as a port to service one of the mills. A summary of the dispute is contained in document UNEP/CBD/BS/WG-L&R/3/INF/2.

32. On 23 January 2007, the Court announced its decision regarding Uruguay's request for the indication of provisional measures concerning a blockade by Argentinean citizens of a bridge that spans the River Uruguay and links the two countries. The Court rejected Uruguay's request on the grounds that there was not "an imminent risk of irreparable prejudice to the rights of Uruguay in the dispute before [the Court] caused by the blockades of the bridges and roads linking the two States". [25] Judge *ad hoc* Torres Bernárdez appended a dissenting opinion to the Court's Order.

33. Argentina and Uruguay filed their Memorial and Counter-Memorial on the main issues of the dispute within their respective time limits of 15 January 2007 and 20 July 2007. At Argentina's request alleging new developments in the case since the filing of the memorial and the need to submit new technical documents, the Court authorized the filing of a Reply by Argentina and of a Rejoinder by Uruguay due, respectively, on 29 January 2008 and 29 July 2008. [26] The documents filed by the two parties contain a number of references to the *Convention on Biological Diversity* (CBD). [27]

34. Chapter III of Argentina's Memorial outlined the applicable law, specifically the Statute of the River Uruguay. [28] The chapter included a section on how the 1975 Statute must be interpreted and applied in light of other international instruments. Argentina noted that Articles 1 and 41(a) of the 1975 Statute refer in general terms to other international agreements. The country argued that the CBD is one of the relevant international agreements that develops and completes the obligations in the 1975 Statute. Argentina referred, in particular, to:

(a) The definitions of biodiversity and sustainable use as contained in Article 2 of the Convention;

(b) The obligation in Article 6 to integrate conservation and sustainable use of biodiversity into national action plans;

(c) The obligation in Article 10(b) to adopt measures relating to the use of biodiversity to avoid or minimize adverse impacts on biodiversity; and

(d) The obligations concerning impact assessment and minimizing adverse impacts as contained in Article 14 of the Convention.

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[25] International Court of Justice, Press Release 2007/2, 23 January 2007.

[26] International Court of Justice, Press Release 2007/20.

[27] The dispute settlement provisions contained in Article 27 of and Annex II to the CBD might also be noted. These require negotiation and mediation as first steps in the settlement of disputes over the interpretation or application of the Convention. Parties may also declare that, for disputes not resolved by negotiation or mediation, they accept either arbitration as set out in Part 1 of Annex II to the Convention or submission of the dispute to the International Court of Justice or both as compulsory means of dispute settlement. If the parties to a dispute under the Convention have not accepted arbitration or submission of the dispute to the ICJ then the dispute is to be submitted to conciliation in accordance with Part 2 of Annex II to the Convention unless the parties agree otherwise.

[28] This summary should not be considered an exhaustive analysis of the arguments made by Argentina and Uruguay before the ICJ and their relevance to the liability and redress process under the Biosafety Protocol. Instead, the summary focuses only on consideration of biological diversity in the different arguments.

Argentina also referred to decision VII/14 on biological diversity and tourism in which the Parties to the Convention recognized that sustainable tourism can provide significant benefits to biodiversity conservation. Argentina stated that the sustainable tourism it has proposed for the Uruguay River region would contribute to the conservation of biodiversity. [29]

35. Chapter V of Argentina's Memorial sets out the arguments supporting the former's allegations of Uruguay's violations of its substantive obligations under the 1975 Statute. This includes a section arguing that Uruguay breached its obligations to prevent pollution and to protect the water quality of the Uruguay River and its ecosystem including specifically that Uruguay did not take all the necessary measures to protect and preserve the biological diversity of the Uruguay River and its associated environment. Argentina pointed to Article 41(a) of the Statute of the River Uruguay, which states in part that the Parties to the agreement undertake "[t]o protect and preserve the aquatic environment and, in particular, to prevent its pollution, by prescribing appropriate rules and measures in accordance with applicable international agreements". The country argued that this obligation is not limited to protecting the water quality of the Uruguay River but extends to an obligation to protect the biological diversity of the river. [30]

36. Argentina pointed to the rich biodiversity of the Uruguay River, including a number of species that are threatened with extinction. [31] It argued that Article 41(a) of the 1975 Statute requires Uruguay to take into account and implement the CBD (amongst other international agreements) and that the provisions and obligations of the CBD are relevant in the framework of the business activities on the River and its associated environment. [32]

37. Argentina stated that Uruguay should have undertaken the following measures in order to protect the biodiversity of the river: (i) determine the country's status or position in relation to the Uruguay River and its areas of influence; (ii) identify the amount and type of pollutants that Uruguay knew would be discharged into the river and its surroundings; and (iii) determine the impact of pollutants on biodiversity, based particularly on the obligations of the Ramsar Convention and the CBD. Argentina stated that in contrast to these requirements, Uruguay has not taken the appropriate and necessary measures to protect biodiversity and indeed, has failed to ensure that the information necessary for determining the amount or characteristics of the pollutants known to be discharged into the river and its associated environment is available. Consequently, Argentina stated that it is impossible to determine on the basis of the information that is available what the probable impact could be on biodiversity and, notably, on different species of fish. This was said to constitute a breach by Uruguay of its obligations under Article 41(a) of the 1975 Statute. Argentina argued that Uruguay cannot claim to have complied with its obligation to protect biodiversity when it has not even tried to discover what the volume of pollution likely to affect the biodiversity would be. These breaches are also said to constitute violations of other provisions in the 1975 Statute, in particular Articles 35, 36 and 37. [33]

38. Argentina asserted that the studies it has presented demonstrate that there is a high probability that fish stocks will be affected as well as the diversity of the ecosystem and that a number of factors increase the risk of adverse effects of the construction projects on biodiversity. [34]

39. In this light, Argentina concluded that there was no doubt that Uruguay has failed to take measures to prevent pollution of the Uruguay River. These breaches are said to constitute a serious

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[29] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Mémoire de la République Argentine (15 January 2007), online: International Court of Justice, http://www.icj-cij.org/docket/files/135/15425.pdf at paras. 3.217-3.220.

[30] *Ibid*. at para. 5.45.

[31] *Ibid*. at para. 5.46.

[32] *Ibid*. at para. 5.47.

[33] *Ibid*. at paras. 5.48-5.49.

[34] *Ibid*. at para. 5.52.

violation of Article 41(a) of the 1975 Statute in part because of Uruguay's inability to fulfil the conditions in Articles 3, 5, 8 and 14 of the CBD. [35]

40. Chapter 4 of Uruguay's Counter-Memorial sets out Uruguay's view of the law applicable to the protection of the Uruguay River and its aquatic environment, and asserts Uruguay's full compliance therewith. Uruguay pointed out that all of Argentina's legal arguments are founded on the single factual premise that discharges from the pulp mill will be so harmful to the river that they are prohibited by the 1975 Statute. In Uruguay's view, however, Argentina's premise has no reasonable scientific or technical support and that, without the premise, Argentina's entire legal argument disintegrates [36]. Uruguay agreed that the interpretation of the 1975 Statute should be guided by general international law but argued that the CBD (amongst other international agreements) does not directly apply to this case in which the jurisdiction of the Court is based solely on Article 60 of the 1975 Statute. In addition, Uruguay stated that its actions are in full compliance with the provisions of these international instruments if they did apply in the present case.

41. Section IV of the chapter sets out Uruguay's view on the reference to the CBD as an international standard for the purposes of the 1975 Statute. Uruguay stated that Article 3 of the CBD is no more than a repetition of Principle 2 of the Rio Declaration on Environment and Development and of customary international law. Uruguay also asserted that the obligations undertaken by Parties under the CBD are very general in character and are to be implemented insofar as "possible and appropriate". Furthermore, Uruguay pointed out that it is not clear in what respect Argentina claims that Uruguay is or will be in violation of the Convention. Uruguay argued that if there is significant harm to the river environment or to Argentina then the latter does not need to rely on the CBD; the 1975 Statute would itself be sufficient to sustain Argentina's claim. If there is no such harm, then the CBD remains irrelevant. [37] In addition, Uruguay underlined that the pulp mill will not violate the CBD provisions and pointed out that the International Finance Corporation of the World Bank found that the project had properly assessed potential impacts on biodiversity in accordance with the standards set in the CBD and other applicable treaties. [38]

42. Argentina re-asserted many of the points from its Memorial in its Reply. It argued that the Court must respect and consider the obligations on Argentina and Uruguay arising from other relevant international agreements, which, according to Argentina, include the CBD and include an obligation to protect the biodiversity of the Uruguay River and its associated environment. [39] It observed that the approved location for the project is inappropriate given the fragile nature of the river and the site due, amongst other things, to its rich biodiversity including a number of threatened and vulnerable species. [40] Argentina stated that Uruguay has not taken the necessary measures to ensure the protection of biodiversity and this constitutes a violation of the obligations under the 1975 Statute. [41]

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[35] *Ibid.* at para. 5.53.

[36] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Counter-Memorial of Uruguay (20 July 2007), online: International Court of Justice, http://www.icj-cij.org/docket/files/135/15427.pdf at para. 4.3. In part II of this Counter-Memorial, Uruguay argued in detail that, based on all of the scientific evidence, there is no likelihood that operation of the pulp mill will significantly harm the river or Argentina, and specifically that operation of the mill will cause no harm to navigation, the regime of the river or the quality of its water.

[37] *Ibid.* at paras. 4.71-4.74.

[38] *Ibid.* at paras. 5.36-5.37. According to Uruguay, its full compliance with substantive obligations under the Statute is clearly demonstrated by the fact that the International Finance Corporation and its independent panel of experts have concluded that, in terms of their environmental performance, the two plants will be "among the best in the world". *See also* International Finance Corporation, Cumulative Impact Study, Uruguay Pulp Mills, p. ES.v (September 2006).

[39] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Réplique de la République Argentine (29 January 2008), online: International Court of Justice, http://www.icj-cij.org/docket/files/135/15429.pdf at para. 1.68.

[40] *Ibid.* at paras. 3.8, 3.33, 3.78 and 3.233.

[41] *Ibid.* at para. 4.173-4.174.

43. Argentina also pointed to a report that found that the introduction of monoculture tree plantations to meet the demands of the pulp mill would have negative effects on biodiversity, the long-term productivity of the soils and the water quality of runoff. The report also found that the pulp mill's demand for trees would be greater than what the environment could sustainably produce, taking into account the soil types and the available land in Uruguay. [42]

44. Argentina cited the principle of sustainable development as one that must guide the interpretation and application of the Statute of the River Uruguay. To this end, it noted the obligation to guarantee or promote the sustainable use of natural resources. [43] Argentina cited the definition of "sustainable use" in Article 2 of the Convention as creating an obligation on Parties not to use the components of biological diversity in a way and at a rate that leads to the long-term decline of biodiversity. Argentina stated that the project approved by Uruguay violates this obligation. [44] Another principle cited by Argentina is the precautionary principle. Argentina argued that the Statute of the River Uruguay as well as other international conventions including the CBD provide the legal framework for determining the steps that Uruguay should take in case of scientific uncertainty. Argentina noted specifically the preamble to the Convention in this regard. [45] Argentina argued that the precautionary principle required Uruguay to demonstrate that its actions did not carry a risk of harm to the river, its waters, biodiversity and environment, which, according to Argentina, Uruguay has not done. [46]

45. In its Reply, Argentina again argued that pollution to the Uruguay River that could harm tourism and other leisure activities is prohibited and it pointed to decision VII/14 adopted by the Parties to the CBD at the seventh Conference of the Parties (COP) in 2004 in this regard. [47]

46. Of final relevance here are Argentina's arguments regarding Uruguay's failure to properly conduct an environmental impact assessment (EIA). Argentina noted the "Guidelines for Incorporating Biodiversity-related Issues into Environmental Impact Assessment Legislation and/or Process and in Strategic Environmental Assessment" that were adopted by the Parties to the CBD at COP-6 as one of the instruments that highlights the importance of States evaluating the environmental consequences of economic development projects as early as possible and before any authorization. [48]

47. In chapter 5 of its Rejoinder, Uruguay argued that Argentina's position is not supported by general principles of international law or the CBD (amongst other international agreements). In the chapter, Uruguay stated that it has taken all appropriate measures required by the CBD with a view to ensuring that there will be no significant harmful effects on important components of biological diversity in the river. [49]

48. Section III.A of the chapter sets out Uruguay's view on sustainable use. Uruguay did not dispute the relevance of the principle of sustainable use as referred to in the CBD but it did dispute the argument that the operation of the pulp mill will lead to unsustainable use of the components of biological diversity. [50]

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[42] *Ibid*. at para. 3.36.

[43] *Ibid*. at para. 4.33.

[44] *Ibid*. at para. 4.34

[45] *Ibid*. at para. 4.55.

[46] *Ibid*.

[47] *Ibid*. at para. 4.80.

[48] *Ibid.* at paras. 4.114 - 4.115 and 4.130.

[49] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Rejoinder of Uruguay (29 July 2008), online: International Court of Justice, http://www.icj-cij.org/docket/files/135/15432.pdf at paras. 1.31 and 5.48.

[50] *Ibid.* at para. 5.42.

49. Uruguay argued, first, that Article 2 of the Convention on Biological Diversity simply defines the term "sustainable use" without creating an obligation on States not to cause long-term depletion of biological resources and natural ecosystems as Argentina had argued in its Reply. Secondly, according to Uruguay, Article 8 on *in-situ* conservation is a more appropriate provision to refer to, specifically paragraphs (a), (c) and (d) thereof. Uruguay asserted that Article 8 does not require Parties to avoid anything that might at some point have an impact on the biological resources of the river. Rather, in Uruguay's view, Article 8 is carefully worded in terms that envisage the progressive adoption of conservation measures when "possible" and insofar as they are "appropriate" and was deliberately drafted in such a way as to leave considerable discretion to individual States in deciding what action to take, when to take it, and which resources are sufficiently "important" to merit action. In this regard, Uruguay emphasized that conserving biodiversity does not mean preserving every living thing nor does it require Parties to preserve the natural environment in an unchanged and unchanging state. [51] Instead, Uruguay stated that conserving biodiversity means maintaining the "variability among living organisms" and the "diversity within species, between species and of ecosystems", using terms from the definition of "biological diversity" in Article 2 of the Convention. Uruguay also referred to Article 10 of the CBD on sustainable use of the components of biodiversity [52] and asserted that this Article envisages the progressive adoption of measures and that Uruguay has taken all appropriate measures to implement the Article with respect to the mill. [53]

50. Furthermore, Uruguay pointed out that, with respect to an international river, the provisions on conservation and sustainable use found in the CBD can only realistically be implemented through measures co-ordinated by the riparian countries. Uruguay believed that this means through the standards of the Administrative Commission of the River Uruguay (CARU) that implement Article 36 of the 1975 Statute. In this sense, Uruguay recalled the fact that Argentina did not allege any violation of those standards and Uruguay reiterated its full compliance. [54]

51. Finally, Uruguay did not disagree that an EIA was required for the project but it argued that the 1975 Statute leaves the Parties free to set the specific elements of these assessments for themselves. Uruguay referred to Article 14 of the CBD as also requiring EIA, "but only in very general terms and without specifying detailed rules on content." Uruguay asserted that it was in full compliance with paragraph 1(a) of the Convention. [55]

52. The Court held public hearings on the case from 14 September to 2 October 2009. At the end of the oral proceedings, the agents for Argentina and Uruguay presented their final submissions to the Court. Argentina stated:

"For all the reasons described in its Memorial, in its Reply and in the oral proceedings, which it fully stands by, the Argentine Republic requests the International Court of Justice:

a) to find that by authorizing:
   (i) the construction of the ENCE mill;
   (ii) the construction and commissioning of the Botnia mill and its associated facilities on the left bank of the River Uruguay,

the Eastern Republic of Uruguay has violated the obligations incumbent on it under the Statute of the River Uruguay of 26 February 1975 and has engaged its international responsibility;

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[51] *Ibid.* at paras. 5.43-5.45.

[52] Uruguay identified (a) and (b) as the most relevant paragraphs in Article 10, *ibid.* at para. 5.46.

[53] *Ibid.*

[54] *Ibid*. at para. 5.47.

[55] *Ibid.* at para. 5.81.

b) to adjudge and declare that, as a result, the Eastern Republic of Uruguay must:

(i) resume strict compliance with its obligations under the Statute of the River Uruguay of 1975;

(ii) cease immediately the internationally wrongful acts by which it has engaged its responsibility;

(iii) re-establish on the ground and in legal terms the situation that existed before these internationally wrongful acts were committed;

(iv) pay compensation to the Argentine Republic for the damage caused by these internationally wrongful acts that would not be remedied by that situation being restored, of an amount to be determined by the Court at a subsequent stage of these proceedings;

(v) provide adequate guarantees that it will refrain in future from preventing the Statute of the River Uruguay of 1975 from being applied, in particular the consultation procedure established by Chapter II of that Treaty." [56]

53. Uruguay's final submission requested the Court to reject Argentina's claims and to affirm Uruguay's right to continue operating the Botnia plant in conformity with the provisions of the 1975 Statute. [57]

54. The Court's judgment will be rendered at a public sitting, the date of which has not yet been announced.

F. International Maritime Organization (IMO)

International Convention on Liability and Compensation in Connection with Carriage of Hazardous and Noxious Substances by Sea ("HNS Convention")

55. At its 95th session, held from 30 March to 3 April 2009, the IMO Legal Committee approved a Draft Protocol to the 1996 HNS Convention. The Draft Protocol aims to facilitate the rapid entry into force of the HNS Convention by addressing several practical problems which were considered a hindrance to its ratification. The Convention and the Protocol are to be read and interpreted together as one single instrument.[58]

56. Under the original HNS Convention, the person liable for LNG (liquefied natural gases) contributions was the person who held title to the cargo before its discharge. This titleholder need not be from a Party to the Convention and, therefore, it would be impossible to enforce payment of the contribution to the LNG account. The Draft Protocol addresses this issue by making the receiver liable for the contributions. In certain situations where the titleholder pays, there must be an agreement between the receiver and the titleholder and the receiver must inform the State Party of the existing agreement. The responsibility, however, reverts to the receiver if the titleholder fails to pay the contribution.[59]

57. To deal with the difficulties in setting up a reporting system for packaged goods, the draft Protocol excludes these from the definition of contributing cargo and, therefore, the receiver of these

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[56] International Court of Justice Press Release 2009/28, 2 October 2009.

[57] *Ibid.*

[58] Report of the Legal Committee on the Work of its Ninety-Fifth Session, Doc. Leg 95/10 of 22 April 2009, Annex 3, "Draft Protocol Of [20..] to Amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996", Article 18, http://folk.uio.no/erikro/WWW/HNS/LEG%2095-10.pdf.

[59] *Ibid.* Article 11.

goods is not liable for contributions to the HNS Fund. "Contributing cargo" is now defined as any "bulk" hazardous and noxious substance. [60]

58. Article 43 regarding the submission of data on the relevant quantities of contributing cargo received during the preceding year and annually thereafter as a pre-requisite to depositing an instrument of ratification, acceptance, approval or accession has been deleted.[61]

59. The Draft Protocol makes reporting a condition to its ratification. Under Article 20, Final Clauses, the Draft Protocol states that consent to be bound by the Protocol must be accompanied by a report of the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account. If a report does not accompany the ratification, the Secretary-General is not to accept it.[62] Also, if the State, still awaiting the entry into force of the Protocol, fails to submit annual reports, it will be temporarily suspended from being a Contracting State and the Protocol will not enter into force for that State while reports are still pending.[63] If the Protocol has already come into force for the non-complying State, no compensation for any incident shall be paid by the HNS Fund for damage in the territory until the obligations of annual reporting have been complied with in respect of that State Party for all years prior to the occurrence of an incident for which compensation is sought. This requirement is waived for claims in respect of death or personal injury. [64]

60. At its 101st session in November 2008, the IMO Council endorsed the Legal Committee's recommendation that a diplomatic conference be convened as early as possible in 2010 for the purpose of considering and adopting the Draft Protocol. Accordingly, an International Conference on the Revision of the HNS Convention is planned to be held in London on 26 April 2010. The provisional agenda for the Conference indicates that the Draft Protocol will be considered under item 6.1. [65]

Single insurance certificates under the IMO liability and compensation conventions

61. The IMO Legal Committee met for its 96th session from 5 to 9 October 2009. It discussed the findings of the Correspondence Group set up after the 94th session of the Committee to consider the development of a single model compulsory insurance certificate to reduce administrative burdens associated with the implementation of a number of the IMO liability treaties. Following a comprehensive review of the issues, the Legal Committee concluded that, at this point in time, neither a non-mandatory approach – via an Assembly resolution containing a model certificate – nor a mandatory approach – either by amending each relevant instrument or adopting a Protocol – would be practical or feasible. [66] In particular, the fact that only three of the six liability instruments involved were currently in force was an obstacle to approving or adopting a single model certificate.

62. The liability treaties referred are: the International Convention on Civil Liability for Oil Pollution Damage, 1969 (in force); the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage (in force); the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (in force); the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (not yet in force); the Nairobi International Convention on the Removal

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[60] *Ibid*. Article 10
[61] *Ibid*. Article 16
[62] *Ibid*. Article 20
[63] *Ibid*.
[64] *Ibid.* Article 14.2 and 14.5
[65] Provisional agenda of the International Conference on the Revision of the HNS Convention, to be held in London on 26 April, 2010. http://www.imo.org/includes/blastDataOnly.asp/data_id%3D26665/1.pdf
[66] Website "Newsroom" of the Legal Committee of the IMO on the work of its 96th session.

of Wrecks, 2007 (not yet in force); and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, which is not in force and is set to be amended by a new protocol to be adopted at a Diplomatic Conference in April 2010.

International Oil Pollution Compensation Funds

63. Following the judgement on compensation claims that arose from the sinking of the oil tanker *Erika* off the coast of France in 1999 [67], the four parties (the representative of the registered owner of the ship (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the classification society (RINA) and the oil company Total SA) that were held criminally and civilly liable have appealed the judgment as have some of the civil parties (including the French Public Prosecutor) who initiated the claims. The appeal was heard by the Court of Appeal in Paris starting on 5 October 2009. The court has not yet handed down its ruling.

64. As described in document UNEP/CBD/BS/GF-L&R/1/INF/1, the French community of Mesquer was successful in pursuing Total in civil courts for the costs incurred by the community in cleaning up the coast from the oil that washed ashore following the sinking of the tanker. Mesquer's success relied on a ruling of the European Court of Justice that found that oil spilled at sea, once mixed with water and sediment, could constitute waste and that Total could be responsible for the costs of disposing the waste if a court finds that the company contributed to the risk that the pollution caused by the shipwreck would occur.

65. In another case, the French community of Batz-sur-Mer ordered Total to eliminate waste coming from the holds of the *Erika* and to restore the site to its previous state. Total obtained the cancellation of that order from the administrative tribunal of Nantes. This ruling was confirmed on appeal. Batz-sur-Mer then appealed to the *Conseil d'Etat*. In a ruling handed down on 10 April 2009, the *Conseil d'Etat* also relied on the decision of the European Court of Justice but found that Total could not, in its role solely as a producer of a product that generated the waste, be required to conduct clean-up operations, irrespective of whether the company's activities did or did not contribute to the occurrence of the accident. The company could, however, have a subsidiary responsibility for expenses that were not covered by the ship owner and/or the charterer or by the International Oil Pollution Compensation Fund if Total was found to have contributed to the risk of the pollution. [68]

G. International Law Commission

66. The International Law Commission completed its two-part work related to the topic "International liability for injurious consequences arising out of acts not prohibited by international law". At its fifty-third session in 2001, it completed the draft articles on prevention of transboundary harm from hazardous activities and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles. It also completed, at its fifth-eighth session in 2006, the draft principles on allocation of loss in the case of transboundary harm arising out of hazardous activities and recommended to the General Assembly that it endorse the draft principles by a resolution and urge States to take national and international action to implement them.

[67] For more information on the dispute and the claims see documents UNEP/CBD/BS/WG-L&R/5/INF/1 and UNEP/CBD/BS/GF-L&R/1/INF/1 that describe the compensation claims under the *International Convention on Civil Liability for Oil Pollution Damage, 1992* and the *International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992.*

[68] Conseil d'Etat, 10 April 2009, n° 304803, Cne de Batz-sur-Mer.

67. The United Nations General Assembly considered the work of the ILC at its sixty-first[69] and sixty-second session. During the sixty-second session of the General Assembly, the Sixth Committee, which is the primary forum for the consideration of legal questions in the General Assembly, considered the item at its 12th and 28th meetings, held on 23 October and 19 November 2007, respectively. The main focus of the Committee's consideration was the final form that the draft instruments should take. On the basis of a report (*A/62/452)* and draft resolution[70] prepared by the Sixth Committee, the General Assembly adopted resolution 62/68 as regards its agenda item 84 on 6 December 2007.

68. According to the resolution, the General Assembly: (i) welcomed the conclusion of the work of the International Law Commission on prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm and its adoption of the respective draft articles and draft principles and commentaries on the subjects; (ii) Commended the articles on prevention of transboundary harm from hazardous activities, and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, presented by the Commission to the attention of Governments, without prejudice to any future action, as recommended by the Commission regarding the articles on the one hand and the principles on the other; (iii) Invited Governments to submit comments on any future action, in particular on the form of the respective articles and principles, bearing in mind the recommendations made by the Commission in that regard, including in relation to the elaboration of a convention on the basis of the draft articles, as well as on any practice in relation to the application of the articles and principles.[71]

69. There is no follow up action on this item during the sixty-third and sixty-fourth sessions of the General Assembly. The provisional programme of work for the Sixth Committee laid out for the purpose of the sixty-fifth session of the General Assembly indicates that the matter is scheduled to be considered on 21 and 22 October 2010.[72]

70. At the same session (i.e., sixty-second session) the United Nations General Assembly has also adopted, based on a report from the Sixth Committee (A/62/446*)*, another resolution concerning "Responsibility of States for internationally wrongful acts"**,** a work that was adopted earlier, in the form of draft articles, by the Commission in August 2001 and reported/forwarded to the General Assembly.[73] Through this latest resolution, the General Assembly noted the compilation of decisions of international courts, tribunals and other bodies referring to the articles, prepared by the Secretary-General and requested the Secretary General to update the compilation and make it available to its sixty-fifth session. It also commended, once again, "the articles on responsibility of States for internationally wrongful acts, to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action", and requested the Secretary General to seek written comments from Governments on any future actions regarding the articles.[74]

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[69] The General Assembly took note of the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, resolution 61/36.

[70] A/C.6/62/L.19, Sixty-second session, Sixth Committee ,agenda item 84 "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".

[71] United Nations General Assembly resolution 62/68 on consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm.

[72] Provisional programme of work for the sixty-fifth session as adopted by the Sixth Committee at its 25th meeting on 12 November 2009 (pending adoption by the General Assembly), http://www.un.org/ga/sixth/64/65_session.shtml

[73] Report of the ILC on the work of its fifty-third session, ILC 53rd report, 2001. See also United Nations General Assembly resolution during its fifty-sixth session, A/RES/56/83, 12 December 2001. For more information see Secretariat document UNEP/CBD/COP-MOP/1/9/Add.1, 4 December 2003.

[74] United Nations General Assembly resolution 62/61 of 6 December 2007 on responsibility of States for internationally wrongful acts.

Annex

STATUS OF INTERNATIONAL ENVIRONMENT-RELATED LIABILITY INSTRUMENTS AS OF FEBRUARY 2008 IN CHRONOLOGICAL ORDER OF ADOPTION

INSTRUMENTS	Date of adoption	Number of signatures	Ratification/Acceptance /Approval/Accession	Date of entry into force
ICAO Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface	7 October 1952	25	49	4 February 1958
• Amending Protocol	23 September 1978	14	12	25 July 2002
ICAO Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft	2 May 2009	7	0	Not in force
ICAO Convention on Compensation for Damage Caused by Aircraft to Third Parties	2 May 2009	9	0	Not in force
OECD Paris Convention on Third party Liability in the Field of Nuclear Energy	29 July 1960	18	16	1 April 1968
• Amending protocol	28 January 1964	15	16	1 April 1968
• Amending protocol	16 November 1982	15	16	1 August 1991
• Amending protocol	12 February 2004	16	1	Not in force
Supplementary Convention	31 January 1963	13	12	4 December 1974
• Amending protocol	28 January 1964	13	12	4 December 1974
• Amending protocol	16 November 1982	14	12	7 October 1988
• Amending protocol	12 February 2004	13	2	Not in force
Convention on the Liability of Operators of Nuclear Ships	25 May 1962	17	7	Not in force
IAEA Vienna Convention on Civil Liability for Nuclear Damage	21 May 1963	14	36	12 November 1977
• Amending protocol	12 September 1997	15	5	4 October 2003
Supplementary Convention	12 September 1997	13	4	Not in force
UN Convention on International Liability for Damage Caused by Space Objects	29 November 1971	25	89	1 September 1972
Convention on Civil Liability for Oil Pollution Damage resulting from the Exploration for and Exploitation of Seabed Mineral Resources	1 May 1977	6	None	Not in force

INSTRUMENTS	Date of Adoption	Number of signatures	Ratification/Acceptance /Approval/Accession	Date of Entry into force
UNECE Convention on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels	10 October 1989	2	1	Not in force
IMO International Convention on Civil Liability for Oil Pollution Damage (replaced 1969 Convention)	27 November 1992	10	122	30 May 1996
• Amendment	18 October 2000	N/A	N/A	1 November 2003
Supplementary FUND Convention (replaced 1971 Convention)	27 November 1992	10	104	30 May 1996
• Amendment	18 October 2000	N/A	N/A	1 November 2003
• Protocol	16 May 2003	5	26	3 March 2005
Council of Europe Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment	21 June 1993	9	0	Not in force
IMO International Convention on Liability and Compensation in Connection with Carriage of Hazardous and Noxious Substances by Sea	3 May 1996	8	14	Not in force
Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal	10 December 1999	13	10	Not in force
IMO International Convention on Civil Liability for Bunker Oil Pollution Damage	23 March 2001	11	46	21 November 2008
UNECE Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters	21 May 2003	24	1	Not in force
Antarctic Treaty System, annex VI, Liability arising from Environmental Emergencies, to the Protocol on Environmental Protection to the Antarctic Treaty	14 June 2005	N/A	4	Not in force
IMO Nairobi International Convention on the Removal of Wrecks, 2007	18 May 2007	6	1	Not in force

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