

JUSTITIA ET PACE
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Transboundary Air Pollution

(Twentieth Commission, Rapporteur : Mr Geraldo E. do Nascimento e Silva)

(The English text is authoritative. The French text is a translation.)

The Institute of International Law,

Recalling its Resolution of Athens in 1979 on the Pollution of Rivers and Lakes and International Law ;

Considering that transboundary air pollution is assuming increasingly alarming proportions, over a broad field, for example acid rain and nuclear contamination ;

Deeply concerned by the effects of transboundary air pollution on the environment and on human health, on soil, agriculture and production, forests, life in lakes, rivers and the sea, and the ozone layer ;

Equally concerned by irreparable damage to buildings, monuments and sites, many of which are part of the cultural and natural heritage of mankind ;

Recalling the obligation to respect the sovereignty of every State over its territory, as a result of which each State has the duty to prohibit and to prevent any use of its territory likely to cause injury in the territory of another State ;

Bearing in mind the need to protect areas beyond the limits of national jurisdiction ;

Adopts the following articles :

Article 1

1. For the purposes of this Resolution, “transboundary air pollution” means any physical, chemical or biological alteration in the composition or quality of the atmosphere which results directly or indirectly from human acts or omissions, and produces injurious or deleterious effects in the environment of other States or of areas beyond the limits of national jurisdiction.

2. In specific cases, the existence and characteristics of pollution shall, to the extent possible, be determined by reference to environmental norms established through agreements or by the competent international organizations and commissions.

Article 2

In the exercise of their sovereign right to exploit their resources pursuant to their own environmental policies, States shall be under a duty to take all appropriate and effective measures to ensure that their activities or those conducted within their jurisdiction or under their control cause no transboundary air pollution.

Article 3

1. For the purpose of fulfilling their obligation under Article 2, States shall take, and adapt to the circumstances, all appropriate and effective measures, in particular :

- a) to prevent any new form of transboundary air pollution or any increase in the existing degree of pollution ; and
- b) progressively to eliminate existing transboundary air pollution within the shortest possible time.

2. Such measures can be especially rigorous in the case of activities which :

- a) involve particularly dangerous materials ; or
- b) threaten areas or environments requiring special protection.

Article 4

In order to comply with the obligations set forth in Articles 2 and 3, States shall in particular use the following means :

- a) at the national level, enactment of all necessary laws and regulations, and adoption of efficient and adequate administrative and technical measures and judicial procedures for the enforcement of such laws and regulations ;
- b) at the international level, regional or universal co-operation in good faith with other States concerned.

Article 5

States are under a duty to take all appropriate and effective measures to prevent any extension, through the export of polluted products or other polluted objects, of the harmful effects of a pollution of their atmosphere resulting from the activities of other States.

Article 6

States incur responsibility under international law for any breach of their international obligations with respect to transboundary air pollution.

Article 7

With a view to ensuring an effective system of prevention and of compensation for victims of transboundary air pollution, States should conclude international treaties and enact laws and regulations concerning, in particular :

- a) systems of strict liability and compensation funds ;
- b) environmental norms, whether regional or universal, in particular quality and safety norms ;
- c) the jurisdiction of courts, the applicable law and the enforcement of judgments.

Article 8

1. In carrying out their duty to co-operate, States shall :

- a) regularly inform other States concerned of all appropriate data on air pollution in their territories, including its causes, its nature, whether man-made or natural, the damage resulting from it, and the preventive measures taken or proposed ;
- b) notify other States concerned in due time of any activities envisaged in their own territories which may cause a significant threat of transboundary air pollution ;
- c) consult with other States concerned on actual or potential problems of transboundary air pollution so as to reach, by methods of their own choice, solutions consistent with their interests and with the protection of the environment ;

2. States shall, where appropriate, conclude agreements in order to :

- a) co-ordinate or pool their scientific and technical research programmes to combat air pollution, whether man-made or natural ;
- b) set up international or regional commissions with the widest terms of reference, providing where appropriate for the participation of local authorities, or strengthen the powers or co-ordination of existing institutions ;
- c) establish co-ordinated or unified networks for permanent observation and control of air pollution, whether man-made or natural ;

d) attempt a harmonisation of environmental norms as well as of norms relating to the level of contamination of consumer goods.

3. States shall also develop safeguards for persons who may be affected by transboundary air pollution, in relation both to prevention and compensation, by granting on a non-discriminatory basis the widest access to judicial and administrative procedures in the States in which such pollution originates.

Article 9

1. In the event of an accident or activities causing a sudden increase in the level of air pollution, even if due to natural causes, which is capable of causing substantial harm in another State, the State of origin is under a duty :

- a) promptly to warn all affected or potentially affected States ;
- b) to take all appropriate steps to reduce the effects of such increase.

2. In the event of a disaster involving air pollution in the territory of a State, other States and competent international organisations should, as a matter of urgency and with the consent of the State concerned, undertake humanitarian action to assist the victims.

Article 10

1. Without prejudice to their other obligations relating to nuclear explosions, States shall prohibit, prevent and refrain from carrying out any nuclear explosion likely to cause transboundary air pollution of a radioactive nature.

2. In order to ensure compliance with applicable health and safety standards, States should open nuclear power plants on their territory to international inspection.

Article 11

States shall take all necessary measures to protect the ozone layer against adverse effects resulting or likely to result from human action, in order to protect life and the environment.

Article 12

States shall take all necessary measures to prevent the emission, in their territories, of fumes which, by reason of their quantity or chemical composition, are likely to contribute to the formation of acid rain.

Article 13

Developed States and competent international organisations should provide developing States with appropriate technical or other assistance, in order to assist them in fulfilling the obligations and in implementing the recommendations referred to in this Resolution.

Article 14

This Resolution is without prejudice to any obligation which a State may have to protect individuals from the effects of air pollution other than transboundary air pollution.

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(20 September 1987)