

3rd COMMISSION

Harm Prevention Rules Applicable to the Global Commons

Rapporteurs : Ms Jutta Brunnée and Mr Nico Schrijver

RESOLUTION

**HARM PREVENTION RULES APPLICABLE TO THE ENVIRONMENT OF
AREAS BEYOND NATIONAL JURISDICTION**

The Institute of International Law,

Deeply concerned by the increasing harm to the environment, the natural systems, and the vital ecological functions of areas beyond national jurisdiction, in particular the accelerating climate crisis, deleterious effects on the atmosphere and the loss of biological diversity in those areas,

Recognizing that the environment and the natural systems of the Earth within and beyond national jurisdiction are intrinsically interconnected, notwithstanding the focus of the present *Resolution* on the environment of areas beyond national jurisdiction,

Considering the common interest of present and future generations of humankind in the prevention of harm to the environment of areas beyond national jurisdiction and in preserving its natural systems and vital ecological functions,

Bearing in mind that harm to the environment may impair the effective enjoyment of human rights and that the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights,

Considering that the principle of common but differentiated responsibilities and respective capabilities guides the interpretation and application of obligations under international environmental law,

Recognizing the need to ensure that all States have the capacity for the implementation of the obligations to prevent harm to the environment of areas beyond national jurisdiction,

Acknowledging that scientific knowledge and scientific institutions play an indispensable role in the objective determination of what constitutes harm or risk of harm to the environment of areas beyond national jurisdiction,

Emphasizing international law's important role in the prevention of harm to the environment of areas beyond national jurisdiction,

Recalling the Stockholm Declaration on the Human Environment of 16 June 1972 and the Rio Declaration on Environment and Development of 13 June 1992,

Having regard to multilateral conventions and principles of international law applicable to the protection of the environment of areas beyond national jurisdiction,

Recalling the International Law Commission's 2001 Draft Articles on Prevention of Transboundary Harm of Hazardous Activities, which address harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, and its 2021 Draft Guidelines on the Protection of the Atmosphere, which address both transboundary air pollution and global concerns regarding atmospheric degradation,

Taking into account the Advisory Opinion of the International Tribunal for the Law of the Sea of 21 May 2024 on *Climate Change and International Law*, the Advisory Opinion of the Inter-American Court of Human Rights of 3 July 2025 on *The Climate Emergency and Human Rights* and the Advisory Opinion of the International Court of Justice of 23 July 2025 on *Obligations of States in Respect of Climate Change*,

Recalling the Institute's Resolution on the Environment, adopted in Strasbourg on 4 September 1997 and its Resolution on Obligations *erga omnes* in International Law, adopted in Krakow on 27 August 2005,

Stressing the need for the clarification and progressive development of the rules applicable to the prevention of harm to the environment of areas beyond national jurisdiction,

Adopts the following articles on the obligations of States under general international law to prevent significant harm to the environment of areas beyond national jurisdiction:

Article 1: Meaning of Terms

For the purposes of the present articles:

1. **“Areas beyond national jurisdiction”** refers to the high seas, the deep seabed and ocean floor and subsoil thereof, and the atmosphere of the Earth outside national airspace;
2. **“Environment”** encompasses the Earth’s abiotic and biotic natural elements, in particular water, air, soil, fauna and flora, as well as the interactions between them through the natural systems of the Earth;
3. **“Harm to the environment of areas beyond national jurisdiction”** means significant deleterious impacts on the environment of areas beyond national jurisdiction;
4. **“Risk of harm to the environment of areas beyond national jurisdiction”** includes risks taking the form of a high probability of significant deleterious impacts and a low probability of disastrous impacts on the environment of areas beyond national jurisdiction, including long-term impacts;
5. **“Obligations *erga omnes*”** means obligations under general international law owed to the international community as a whole.

Article 2: Obligation of Prevention

States shall prevent harm to the environment of areas beyond national jurisdiction in accordance with the substantive and procedural obligations set out in this Resolution.

Article 3: Due Diligence

1. In performing the obligation under Article 2, States shall exercise due diligence in respect of all activities under their jurisdiction or control that entail or may entail a risk of harm to the environment of areas beyond national jurisdiction.
2. The exercise of due diligence requires the adoption of appropriate rules and measures and an adequate level of vigilance in their enforcement and in the exercise of administrative control applicable to public and private operators.
3. The standard of conduct that is required of States in exercising due diligence is variable and may evolve over time, according to factors that include:
 - (a) the probability and degree of risk of harm to the environment of areas beyond national jurisdiction;
 - (b) relevant scientific knowledge and technological information;
 - (c) available technologies;
 - (d) relevant international rules and standards;
 - (e) differentiated capabilities and resources of individual States.
4. In accordance with the factors set out in paragraph 3, where activities under the jurisdiction or control of a State may entail a risk of serious or irreversible harm, the exercise of due diligence encompasses the taking of appropriate precautionary measures.

Article 4: Obligation of Cooperation

States shall cooperate in good faith with each other and, as appropriate, with competent international organizations to prevent harm to the environment of areas beyond national jurisdiction.

Article 5: Obligation to Assess Risks of Harm and Environmental Impacts

When there are plausible indications that proposed activities under their jurisdiction or control may cause harm to the environment of areas beyond national jurisdiction, States shall ensure, prior to undertaking or permitting such activities, that an assessment of the risk of harm is conducted, including through an environmental impact assessment.

Article 6: Obligations of Notification, Information and Consultation

1. When an assessment in accordance with Article 5 indicates a risk of harm to the environment of areas beyond national jurisdiction from proposed activities under their jurisdiction or control, or when they otherwise become aware of such a risk posed by proposed or existing activities under their jurisdiction or control, States shall take appropriate and timely measures to notify all other States of that risk and to provide relevant information, including under applicable international agreements and through competent international organizations.
2. When States become aware of a risk of harm to the environment of areas beyond national jurisdiction from proposed or existing activities under their jurisdiction or control, they shall enter into timely consultations in good faith, including under applicable international agreements and through competent international organizations, with a view to the adoption of appropriate measures to prevent such harm.
3. In keeping with Article 3(4), where activities under their jurisdiction or control may entail a risk of serious or irreversible harm, States shall share relevant information and consult with a view to the adoption of appropriate precautionary measures.
4. States shall ensure that the information described in paragraph 1 is made available to the public to the extent possible and by such means as are appropriate.

**Article 7: *Erga Omnes* Nature of Obligations to Prevent Harm to the Environment of Areas
Beyond National Jurisdiction**

1. States' obligations to prevent harm to the environment of areas beyond national jurisdiction, as set out in this Resolution, are obligations *erga omnes*.
 2. Any State is entitled to invoke the responsibility of other States for a breach of these obligations and to take action in conformity with international law to ensure compliance with them.
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