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## TELDERS MOOT COURT COMPETITION

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### EDITORIAL NOTE

The 13th Telders International Law Moot Court Competition was held again in the Peace Palace in The Hague from April 5-7, 1990. In thirteen years participation has expanded from three teams in 1977 to eleven teams this year.

The case put before the teams this year, entitled *The 'Joint Ecological Management' Case*, combined problems of general international law with legal problems of an environmental and economic nature, such as air and water pollution, and economic sanctions. The case was included in the last issue of the *Leiden Journal of International Law*.

In the finals the team from the University of Leuven, Belgium and the team from Helsinki, Finland had to convince Judge Manfred Lachs, Judge José Maria Ruda and Judge Sir Robert Jennings with their arguments. Overall winner became the team from Belgium, runner up was the team from Finland.

The following pages contain excerpts from the best memorial. For the Applicant (Gulinodos), the team from Italy had the best memorial, for the Respondent (Ranadia), the winner was the team from Belgium. Due to the length of the memorials we are unable to place the text completely in the Journal. For that reason we thought it would be interesting to present firstly the 'Issues', because they show how each team approached the case, and secondly take to one interesting aspect, i.e., responsibility under international law for environmental damages.

The Editorial Staff hopes that publication of these excerpts will show students how a life-size and difficult case can be approached and mastered. The complete text, including footnotes and references, can be obtained through the *Leiden Journal of International Law*.

## GOVERNMENT OF GULINODOS, APPLICANT

### 1. ISSUES

1. Has the Respondent an obligation under international law to prevent environmental damages caused to the Applicant's territory?

2. Is there a causal link between the Respondent's industrial policy and the environmental damage occurring in the Applicant's territory?

3. Has the Applicant an obligation under international law to accept a joint management of the drainage basin?

4. Is the unilateral denunciation of the 1936 Transit Trade Treaty lawful under the Law of Treaties?

5. Is the Respondent's policy of imposing heavy taxes consistent with the GATT?

6. Has the Respondent breached its obligations under general international law with regard to the right of transit?

7. Does the Respondent's conduct represent an infringement of the principle of non-intervention?

8. Are the Respondent's counter-measures justified under international law?

9. If the Respondent Government has violated its obligations under international law, is there a obligation to pay compensation?

### 2. ARGUMENT

#### 2. 1. The Respondent is responsible under international law for environmental damages caused to the Applicant's territory and has a duty to prevent further damages

When confronted with the problem of abating air pollution on its own territory in the early 1960's, the Respondent Government had various options open to them. As a matter of fact, the less expensive one was chosen. The policy adopted was simply that of diluting local pollution by exporting it, so to speak, to the Applicant's territory by means of 100 meters chimneys. The smog problems in the Respondent's territory were eliminated, but this achievement was obtained at the expense of the Applicant's fish population which fell dramatically as a consequence of acid rain. The Applicant's Government submits that this conduct on the part of the Respondent does not comply with international law.

The Applicant contends that it is well established in international law that state activities have to be carried out in compliance with the principle of good neighbour-

liness, also referred to by the maxim *sic utere tuo ut alienum non laedas*. This principle is stated in the Charter of the United Nations at Article 74 which reads: "Members of the UN also agree that their policy [...] must be based on the principle of good neighbourliness [...]"<sup>1</sup> All member states thus accept its value for governing reciprocal relations. As the Court stated in the *Corfu Channel Case*: "Every State has the obligation not to allow knowingly its territory to be used contrary to the rights of other States"<sup>2</sup> This implies a limit to state sovereignty. As was said in the *Island of Palmas arbitral award*:

[T]erritorial sovereignty [...] involves the exclusive right to display the activities of a State. This right has a corollary a duty: the obligation to protect within the territory the rights of other States in particular their right to integrity and inviolability.<sup>3</sup>

These two decisions clearly indicate the existence of a general rule obliging states to supervise activities carried out in their territory in order to prevent injury to the interests of neighbouring states. The Respondent's industrial policy denotes a clear lack of consideration for the interests of the Applicant in contrast with this general rule.

State obligations with regard to transboundary air pollution derive from this general rule. The principle of international law which applies to such instances was set forth in the *Trail Smelter award*. The arbitral tribunal stated that:

[U]nder the principles of international law [...] no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein when the case is of serious consequence and the injury is established by clear and convincing evidence.<sup>4</sup>

Thus, while in principle a state may certainly use its territory according to its own policy, this is no longer allowed where serious environmental damage is caused abroad.<sup>5</sup> Although the case brought to the arbitral tribunal was one of short-range transboundary air pollution, there are no grounds for considering that the same

1. 1946/1947 U.N.Y.B. 831.

2. 1949 I.C.J. Rep. 22.

3. *Island of Palmas Case (Netherlands v. U.S.)*, 1928 P.C.I.J. (Ser. A, No. 10)

4. *Trail Smelter Case (U.S. v. Canada)*, 3 U.N.R.I.A.A. 1965 (1941)

5. This principle has been widely recognized by writers. See, e.g., L.F.E. Goldie, *A General View of International Environmental Law. A Survey of Capabilities, Trends and Limits*, 68-69 (R.C.A.D.I., Colloquium 1973); A. Kiss, *La Lutte Contre La Pollution de l' Air sur le Plan International*, id., at 174; P. Dupuy, *International Responsibility of States for Damage Caused by Transfrontier Pollution*, in O.E.C.D., *Legal Aspects of Transfrontier Pollution* 374-375 (1977); E. Klein, *Umweltschutz im Völkerrechtlichen Nachbarrecht* 241-245 (1976); A. Rest, *Responsibility and Liability for Transboundary Air Pollution Damage*, in C. Flinterman, B. Kwiatkowska & J.G. Lammers (eds.), *Transboundary Air Pollution, International Legal Aspects of the Cooperation of States* 308 (1986).

principles should not apply to all kinds of transfrontier pollution. As was said by Judge Castro in his dissenting opinion in the *Nuclear Tests Case*:

[I]f it is admitted as a general rule that there is a right to demand prohibition of the emission by neighbouring properties of noxious fumes, the consequence must be drawn, by an obvious analogy, that the Applicant is entitled to ask the Court to uphold its claim that France should put an end to the deposit of radio-active fall-out on its territory.<sup>6</sup>

The binding value of this principle in international law has been reaffirmed in several instances by municipal courts, for instance by the Federal Court of Switzerland in a dispute between the Solothurn and the Aargau cantons<sup>7</sup> and by a French Administrative Court in a case concerning pollution of the Rhine.<sup>8,9</sup>

The *sic utere tuo* principle was restated with some additions in Principle 21 of the 1972 Stockholm Declaration on the Human Environment. Both parties to the present dispute voted in favour. According to this principle:

[S]tates have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policy, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.<sup>10</sup>

This principle was said by the Canadian delegation to correspond to an already existing rule of customary international law.<sup>11</sup> Its inclusion in the Stockholm Declaration and the fact that 113 states participated in the Conference and voted in favour of viewing Principle 21 as corresponding to a rule of general international law. *Opinio juris* is also shown by General Assembly Resolution No. 2996,<sup>12</sup> which

6. *Nuclear Tests Case (Australia v. France; New Zealand v. France)* 1974 I.C.J. Rep. 389.

7. Quoted by A. Schindler, *The Administration of Justice in the Federal Court of Switzerland*, 15 AJIL 173 (1921).

8. Tribunal Administratif de Strassbourg, July 27, 1983, R.J.E. 343-344 (1983).

9. In a case concerning pollution of the Rhine originating from French territory and affecting the Netherlands, the District Court of Rotterdam made reference to the same principle and stated that:

[T]he discharge of waste salts into an international river by a national legal person amounts, in this case, to a breach by this person of a general principle of law binding on this person *sic utere tuo ut alienum non laedas*.

Handelskwekerij G.J. Bier B.V. v. Mines de Potasse d'Alsace S.A., District Court of Rotterdam, January 8, 1979, 11 Netherlands Yearbook of International Law 333 (1980).

10. 11 I. L. M. 1420 (1972).

11. L.B. Sohn, *The Stockholm Declaration on the Human Environment*, 14 Harv. Int'l L.J. 492 (1973).

12. 1972 U.N.Y.B. 331.

was adopted by a vote of 112 to 0 with 10 abstentions.<sup>13</sup> One of the preambular paragraphs of this Resolution reads as follows: “recalling Principles 21 and 22 [...] bearing in mind that those principles lay down the basic rules governing this matter”. Concern for other states’ environmental interests was expressed by General Assembly Resolution No. 2995, adopted by a vote of 115 in favour with only 10 abstentions. Paragraph 1 emphasized that: “[...] in the exploration, exploitation and development of their natural resources, States must not produce significant harmful effects in zones situated outside their national jurisdiction”.<sup>14</sup> The same wording used in Principle 21 of the Stockholm Declaration can be found in Article 30 of the Charter of Economic Rights and Duties of States, adopted by General Assembly Resolution No. 3281 by a vote of 120 to 6, with 10 abstentions.<sup>15</sup> A similar wording may also be found in General Assembly Resolution No. 37/7,<sup>16</sup> which was approved with a vote of 111 in favour against 1 with 18 abstentions.

Although these Resolutions cannot be considered as binding upon states, their widespread acceptance indicates that states have expressed their conviction of the existence in international law of a rule that territory should not be used in a way that causes significant harm to the environment of other states. In accordance with this principle, the prevention of transfrontier air pollution is requested from member states by the O.E.C.D. Council<sup>17</sup> and by the Council of Europe,<sup>18</sup> while the massive pollution of the atmosphere is considered as an international crime by Article 19 of the International Law Commission Draft Articles on State Responsibility.<sup>19</sup>

Various instances of international treaties point to the same conclusion. For instance the spirit of this principle pervades the Nordic Convention on the Protection of the Environment.<sup>20</sup> An obligation to prevent, reduce and control pollution through the atmosphere is also laid down in Articles 212, 222 of the

13. Abstaining votes were cast by Eastern bloc countries. A likely explanation of the nonsubstantive grounds for abstention by these countries was given by the Cuban delegate to the Second Committee, who stated that: “His delegation had abstained from the vote because it had not participated to the Stockholm Conference; however the draft Resolution contained elements that it unreservedly approved”. Reported in G. Handl, *State Liability for Accidental Transnational Environmental Damage by Private Persons*, 74 AJIL 528 (1980). In fact afterwards they showed their acceptance of the *sic utere tuo* principle by voting in favour of Art. 30 of the Charter of Economic Rights and Duties of States. Reported in 1974 U.N.Y.B. 407.

14. 1972 U.N.Y.B. 330.

15. 1974 U.N.Y.B. 407.

16. 1982 U.N.Y.B. 1024.

17. 1974 Council Recommendation, 14 I.L.M. 242 (1975).

18. Resolution No. 4 (68), European Yearbook 381 (1968).

19. Para. 3(D), 1980 Y.B. I.L.C..

20. 13 I.L.M. 591 (1974).

Convention on the Law of the Sea.<sup>21 22</sup> State practice in the field of transfrontier environmental damages further confirms that the said rule must be considered as a part of modern customary international law. Arguments were put forward on its basis, especially in international negotiations on transboundary air pollution.<sup>23</sup> For instance, in respect of the potential air pollution caused by oil refinery at Sennwald to the neighbour states of Liechtenstein and Austria, the canton of St.Gallen accepted to conduct negotiations with the two concerned states to establish regulations with regard to the amount of sulphur dioxide to be emitted into the air.<sup>24</sup>

With regard to damages due to the explosion of a gunpowder factory in Italy, Switzerland demanded compensation from Italy, referring to the “[...] universally accepted principle of international law according to which States have to refrain from all acts liable to cause damage to the neighbouring country”.<sup>25</sup> Italy submitted to the claim. In reviewing the international implications of the *Cherry Point Oil Pollution Case*, in which the responsibility was recognized by the shipowners,<sup>26</sup> the Canadian Secretary of State for External Affairs noted:

We are especially concerned to ensure observance of the principle established in the 1941 *Trail Smelter* arbitration between Canada and the United States. This has established that one country may not permit the use of its territory in such a manner as to cause injury to the territory of another [...]; Canada accepted this responsibility in the *Trail Smelter* case and we would expect that the same principle would be implemented in the present situation.<sup>27 28</sup>

These elements of state practice are relevant to cases such as the present one, in

21. 21 I.L.M. 1311 (1982).

22. See also Art. 2 of the I.L.I. Resolution, in: 62 A.I.D.I. 297 (1987); and Art. 3 of the International Law Association Montreal Rules, International Law Association, *Montreal Rules of International Law Applicable to Transfrontier Pollution*, Report of the Sixtieth Conference (1982).

23. B. Bothe, *Developments and Problems of Co-operation with regard to Transboundary Air Pollution in Western Europe*, in C. Flinterman, B. Kwiatkowska & J.G. Lammers (eds.), *supra* note 5, at 21.

24. J.G. Lammers, *Pollution of International Watercourses* 250 (1980). Other similar examples of state practice in Europe are reported in: I.H. Van Lier, *Acid Rain and International Law* 116-117 (1983), and J.G. Lammers, *id.* at 224.

25. Rest, *Responsibility and Liability for Transboundary Air Pollution Damage*, in C. Flinterman, B. Kwiatkowska & J.G. Lammers, *supra* note 5, at 299.

26. The World Bond, a tanker registered in Liberia, had leaked 12,000 gallons of crude oil into the sea while unloading at the Atlantic Richfield refinery at Cherry Point, Washington. The oil spread to Canadian waters and fouled beaches in British Columbia; consequently the Canadian Government sent a note to the U.S. Departmentg requesting full damages to be paid by those responsible. Handl, *supra* note 13, at 545.

27. 11 Canadian Yearbook of International Law 334 (1973).

28. The same principle is also reaffirmed in Para. 601 of the *Restatement of the Foreign Relations Law of the U.S. (Revised)*, 1986.

which a precise causal link between state activities and transboundary air pollution can be safely established. Whenever such a link exists, international law imposes a precise obligation to refrain from activities that are the direct cause of the damage.

## GOVERNMENT OF RANADIA, RESPONDENT

### 1. ISSUES

1. Whether Ranadia is responsible for the decline of fish production and has to adopt and enforce adequate measures to prevent the further pollution in the territory of Gulinodos.

2. Whether Ranadia acts contrary to international law by refusing free transit and by imposing taxes on the import, export, and handling of tropical timber.

3. Whether Gulinodos is under the obligation to accept a joint management regime of the drainage basin shared with Ranadia.

### 2. ARGUMENT

#### 2.1. Ranadia is not responsible for the decline of the Barlubba fish production

In the early 1960's Ranadia had to change its industrial policies because of local smog problems and so, a three option plan was elaborated. The construction of higher chimneys, one of the options, was chosen by a large part of the industries. Having lately suffered from the acidification of its lakes, Gulinodos tries to impute the responsibility for such damages on Ranadia.

#### *A. Gulinodos cannot invoke strict liability for environmental damages*

State practice and Courts fail to support the concept of liability for lawful activities.<sup>29</sup> At present, there is neither a customary rule nor a general principle of international law which provides for a system of strict liability for environmental damages.<sup>30</sup> Gulinodos cannot rely upon the *Trail Smelter Arbitration* nor the *Corfu Channel Case*, to refute this principle since state responsibility was grounded upon the breach of an obligation under international law.<sup>31</sup> Further Principle 21 of the

29. I. Brownlie, *System of the Law of Nations: State Responsibility* 50 (1983); J. Willisch, *State Responsibility for technological Damage in International Law* 273 (1987).

30. A.L. Springer, *The International Law of Pollution* 132 (1983); A.C. Kiss, *Droit internationale des états pour les dommages d'origine technologique et industrielle* 26 (1976); Quentin-Baxter, *Second Report on International Liability for the Harmful Consequences arising out of Acts not prohibited by International Law*, 2 Y.B. I.L.C. 110, U.N. Doc. A/CN.4/346/1981.

31. The *Corfu Channel case*, 1949 I.C.J. Rep. 22; *Trail Smelter Arbitration*, 3 U.N.R.I.A.A. 1911-1937 (1941); P. Dupuy, *infra* note 38, at 32, 189; G. Handl, *State Liability for Accidental Transnational Damage*, 74 AJIL 537 (1980).

Stockholm Declaration<sup>32</sup> does not introduce a liability without fault while states agreed that the idea of fault should prevail<sup>33</sup> and strongly opposed to the idea that Principle 21 could be interpreted as imposing an absolute or strict liability.<sup>34</sup>

In absence of a custom, a non-fault based responsibility can only be based upon a convention, as was demonstrated in the *Gut Dam Arbitration*.<sup>35</sup> Such an agreement did not exist between Gulinodos and Ranadia.

In the present case, there is no automatic activation of Ranadia's liability upon the simple occurrence of damage, originating in its territory.<sup>36</sup> Hence, the common system of state responsibility is applicable and Gulinodos has to demonstrate the violation of an obligation under international law.<sup>37</sup>

### *B. Ranadia did not act contrary to international law*

#### **B.1. Ranadia did not violate an obligation to prevent or abate transboundary air pollution.**

Following governmental instructions, a large part of Ranadia's industries constructed higher chimneys. It is alleged that their SO<sub>2</sub> emissions caused the acidification of Gulinodos' lakes.

There is no rule forbidding environmental harmful activities, especially concerning air pollution.<sup>38</sup> Though there is an emerging consensus that pollution of the environment should be countered, a customary duty to prevent and abate all transboundary pollution is missing,<sup>39</sup> since there is no substantial state practice.<sup>40</sup> The

32. *Report of the UN Conference on the Human Environment*, repr. in I.L.M. 1416 (1972).

33. L.B. Sohn, *The Stockholm Declaration*, 1973 Harv. Int'l L.J. 423, 427; G. Handl, G., *State Liability for the Accidental Transnational Environmental Damage by Private Persons*, 74 AJIL 525 (1980); J.G. Lammers, *Balancing the Equities in International Environmental Law*, in: *The Future of the International Law of the Environment* 153, 157 (R.C.A.D.I., colloque, 1985).

34. U.N. Doc. A/CONF.48/P.C.12, Ann. 15, Para. 65 (1971).

35. *Canada and United States Settlement of Gut Dam Claims Arbitration*, repr. in 8 I.L.M. 118 (1968); D. Carreau, *Droit International* 408 (1988); K. Zemanek & J. Salmon, *Responsabilité Internationale* 27 (1987).

36. B. Graefrath, *Responsibility and Damages caused*, II R.C.A.D.I. 112 (1984).

37. Art. 1, *Draft Articles on State Responsibility*, 1979 2 Y.B. I.L.C. 9; I. Brownlie, *Principles of Public International Law* 418-419 (1973).

38. P. Dupuy, *International Liability of States for Damage caused by Transfrontier Pollution*, in O.E.C.D., *Legal Aspects of Transfrontier Pollution* 353 (1977); A.C. Kiss, *Survey of Current Developments in International Environmental Law 1976* IUCN Environmental Policy and Law Paper 57; I. H. van Lier, *Acid Rain and International Law* 100 (1980).

39. N. Ando, *The Law of Pollution in International Rivers and Lakes*, in R. Zacklin & L. Cafilisch (eds.), *The Legal Regime of International Rivers and Lakes* 331, 342-343 (1981); R. Falk, F. Kratochwil & S.H. Menglovitz, *International Law: A Contemporary Perspective* 603 (1985).

40. I. van Lier, *supra* note 38, at 97; I. Pop, *Voisinage et bon voisinage* 164 (1980).

*Trail Smelter Arbitration*<sup>41</sup> is the only case that ever dealt with noxious fumes<sup>42</sup> and did not establish a general principle, since Canada's responsibility was already assumed in the prior compromis referring the matter to the tribunal.<sup>43</sup> Further, the tribunal did not apply international law but the domestic law of the United States.<sup>44</sup> Finally, the decision was only meant to be valid "between the parties concerned, considering the specific circumstances".<sup>45</sup>

Furthermore, the 1972 Stockholm Declaration<sup>46</sup> has no compelling effect.<sup>47</sup> Principle 21 of the Declaration is not a rule of customary international law imposing a duty to prevent, but is merely intended to encourage states to elaborate clear rules which protect the environment<sup>48</sup> which is stressed by Principle 22.<sup>49</sup>

There is no treaty which obliges Ranadia to prevent or abate air pollution. Ranadia's signature of the 1980 ECC Convention on Long-Range Transboundary Air Pollution does not entail a specific obligation. The ECC Convention explicitly requires ratification, which Ranadia never did.<sup>50</sup> According to Article 14 of the Vienna Convention on the Law of Treaties<sup>51</sup> a state is not bound by such an unratified treaty. Moreover, the ECE Convention expressly precludes the notion of responsibility and does not impose reduction goals.<sup>52</sup> Consequently, the maintenance of smokestacks cannot be considered as a frustration of the purpose and objective of this treaty.

It is thus submitted that Ranadia's industrial policy was not contrary to international law, in the absence of a relevant customary or treaty rule.

41. *Trail Smelter Arbitration*, 3 U.N.R.I.A.A. 1911-1982 (1941).

42. P. Dupuy, *supra* note 38, at 33; J. Willisch, *State Responsibility for Technological in International Law* 58-59 (1987).

43. *Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail*, Apr. 15, 1935, Art. 1, 3 U.N.R.I.A.A., 1907-1910.

44. *Id.* Art. IV.

45. *Trail Smelter Arbitration*, *supra* note 41, at 1965-1966.

46. *Supra* note 32.

47. P. Dupuy, *supra* note 38, at 235; K. Zemanek & A.L. Salmon, *supra* note 7, at 35; A.L. Springer, *supra* note 30, at 134.

48. L.B. Sohn, *supra* note 33, at 423, 426-427 and 513-514; R. Falk, F. Krachtowil & S.H. Mendelotvitz, *supra* note 39, at 604.

49. G. Handl *supra* note 31, at 536; A.C. Kiss & J.D. Sicault, *La conférence des Nations Unies sur l'environnement*, 1972 A.F.D.I. 613.

50. *Convention on Long-Range Transboundary Air Pollution*, Nov. 13, 1979, Art. 15, repr. in I.L.M. 1442 (1979).

51. *Vienna Convention on the Law of Treaties*, May 1969, Art. 14, U.N. Doc. A/CONF/39/27.

52. Footnote in the *Convention on Long-Range Transboundary Air Pollution*, repr. in I.L.M. 1445 (1979); G.P. Smith, *The United Nations and the Environment: Sometimes a Great Notion*, 1984 T.I.L.J. 355; A. Fraenkel, *The Convention on Long-Range Transboundary Air Pollution: the Challenge of International Cooperation*, 1989 Harv. Int'l L.J. 456.

### B.2. There was no foreseeability of the transfrontier damage.

In the *Corfu Channel Case*, the Court held that “it cannot be concluded from the mere fact of the control exercised by a state over its territory that that state necessarily knew or ought to have known, of any unlawful act perpetrated therein”.<sup>53</sup> Article 198 of the 1982 Convention on the Law of the Sea supports this ruling.<sup>54</sup>

The large distance between the contaminated area in Gulinidos and the Ranadian industries,<sup>55</sup> not situated near the border with Gulinidos, implies that a direct damage by SO<sub>2</sub> fumes is impossible.<sup>56</sup> Consequently, since the damage was not foreseeable, Ranadia had no duty to consult or inform.<sup>57</sup> Acid rain, the only way by which the sulphur emissions could have any transboundary impact, was a notion at that time not even introduced and not fully understood yet.<sup>58</sup> Hence, not only the lack of foreseeability but also the absence of knowledge preclude Ranadia from responsibility.

### B.3. Ranadia acted in conformity with the principle of due diligence and good neighbourliness.

Ranadia showed sufficient due diligence.

In the absence of a specific agreement, the analysis of a state’s responsibility for transfrontier damage has to be grounded upon the duty of due care,<sup>59</sup> which, according to the *Alabama Arbitration*, has to be exercised “in proportion to the risk”.<sup>60</sup> Some activities are qualified by the international community as ultra-hazardous, involving a significant or exceptional risk of transnational damage.<sup>61</sup> In the present case, Ranadia’s industrial plants activity cannot be considered abnor-

53. *Corfu Channel Case*, *supra* note 31, at 18.

54. United Nations Convention on the Law of the Sea, Dec. 10, 1982, Art. 198, U.N. Doc. A/CONF/62.122 cocc. 3 and cocc. 8.

55. Clarification No. 13.

56. *Trail Smelter Arbitration*, *supra* note 41, at 1911; I. Pop, *supra* note 40, at 187.

57. G. Handl, *supra* note 33, at 556; D. Rauschnig, *Interim Report of the Committee Legal Problems of Continuous and Instantaneous Long Distance Air Pollution*, I.L.A. Rep., Para. 27 at 211 (1986).

58. G.S. Wetstone, & A. Rosencranz, *Acid Rain in Europe and North America: National Responses to an International Problem 3* (1984); I. H. van Lier, *supra* note 40, at 95; A. Fraenkel, *supra* note 52, at 453.

59. I.R. Pinto-Dobermig, *Liability for the Harmful Consequences of Instances of Transfrontier Pollution not Prohibited by International Law*, 1987 *Ö.Z.f.Ö.R.* 106.

60. *Alabama Arbitration (U.S. v. United Kingdom)* (1872), J.B. Moore, I Arbitrations 653 (1898).

61. Convention on Civil Liability for Oil Pollution Damage Resulting from the Exploration and Exploitation of Seabed Mineral Resources, Dec. 17, 1976, repr. I.L.M. 1450 (1977); Vienna Convention on Civil Liability for Nuclear Damage, May 21, repr. in I.L.M. 727 (1963); Brussels Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Dec. 17, 1971, repr. in I.L.M. 277 (1971); Convention on International Liability for Damage caused by Space Objects, June 29, 1971, 961 U.N.T.S. 187; G. Handl, *supra* note 33, at 564; W. Jenks, *Liability for Ultra-Hazardous Activities in International Law*, I.R.C.A.D.I. 1071 (1966).

mally dangerous.<sup>62</sup> Moreover Ranadia included two alternative options and checked the results of its policy. Consequently, Ranadia gave proof of an environmental consciousness and of reasonable diligence.<sup>63</sup>

Ranadia respected the principle of good neighbourliness.

It is generally accepted that neighbouring states have to take into account each other's interests.<sup>64</sup> Ranadia has immediately granted information at the request of Gulinodos of the first sign of a possible transboundary impact. Consequently, Ranadia took into account Gulinodos' interests and provided for the help that could be expected at that stage.

62. B.E. Felske, *Sulphur Dioxide and the Canadian Non-Ferrous Metals Industry*, Technical Rep. Nr. 3, at 25 (1981).

63. A.L. Springer, *supra* note 30, at 13; P. Dupuy, *supra* note 10, at 353; A.C. Kiss, *Droit International de l'Environnement* 106 (1988).

64. U.N. Charter, Art. 74; I.H. van Lier, *supra* note 38, at 109; M. Sorensen, *Principles de Droit International Public*, III R.C.A.D.I. 194 (1960).