

TADEUSZ GADKOWSKI

## The Principle of Good-Neighbourliness in International Nuclear Law<sup>1</sup>

### I

The principle of good-neighbourliness has become generally accepted by both international-law norms and practice. In the authoritative juristic literature on international law, which has been increasingly vocal on this issue, it is approached as a general principle of the law of nations. This, in turn, is no doubt a consequence of its express proclamation in the Charter of the United Nations.<sup>2</sup> There is a clear tendency to make this principle global, which means that good-neighbourly obligations are universal, irrespective of any political, social or especially economic considerations. Precise standards of good-neighbourliness, defined in positive law norms, are used in various fields of international cooperation. There is an evident tendency to introduce this concept to

---

1 Translated from: T. Gadkowski, *Zasada dobrego sąsiedztwa w międzynarodowym prawie atomowym*, in: *Pokój i sprawiedliwość przez prawo międzynarodowe*, ed. C. Mik, Toruń 1997, pp. 89–102 by Tomasz Żebrowski and proofread by Stephen Dersley and Ryszard Rejsner. The translation and proofreading were financed by the Ministry of Science and Higher Education under 848/2/P-DUN/2018.

2 Among publications by Polish authors on this subject, there is a series of works by T. Jasudowicz, *Pojęcie dobrosąsiedztwa w stosunkach międzynarodowych*, “Sprawy Międzynarodowe” 1977, no. 4, pp. 58–72; T. Jasudowicz, *Zasada dobrego sąsiedztwa w Karcie Narodów Zjednoczonych*, “Acta Universitatis Nicolai Copernici – Prawo XX-VIII”, Toruń 1990, pp. 69–87; T. Jasudowicz, “*Dobre sąsiedztwo*” w *Konwencji Prawa Morza z 1982*, “Prawo Morskie” vol. IV, Wrocław–Warszawa–Kraków 1990, pp. 53–73.

bilateral treaties, especially ones concluded by direct neighbours, geographically speaking. This can be noticed in the treaties concluded by Poland in recent years.<sup>3</sup>

## II

According to the classic understanding of the normative aspect of the good-neighbourliness principle, it is an embodiment of the maxim *sic utere tuo ut alienum non laedas*, representing the close interdependence of the interests of countries bordering on each other and the practice of their territorial sovereignty.<sup>4</sup> The principle is derived from the idea of the territorial sovereignty of States, which takes into account and respects the rights of other States, especially neighbouring ones. It has become popular in many aspects of interstate relations.<sup>5</sup> The theoretical fundamentals of good-neighbourliness were laid down by Huber<sup>6</sup> and Andrassy.<sup>7</sup> The latter, applying this idea to the use of international waters, made it clear that the rules of good-neighbourliness bound States independently of any treaty.<sup>8</sup> It would be difficult to formulate a rule

3 By way of example: Treaty of 17 June 1991 between the Republic of Poland and the Federal Republic of Germany on Good-Neighbourliness and Friendly Cooperation (Journal of Laws of 1992, no. 14, item 56); Treaty of 22 May 1992 between the Republic of Poland and the Russian Federation on Friendly and Good-Neighbourly Cooperation (Journal of Laws of 1993, no. 61, item 291).

4 See M. Sorensen, *Principles de droit international public*, “101 Recueil des Cours de l’Académie de Droit International de la Haye” 1960, vol. III; J. Willisch, *State Responsibility for Technological Damage in International Law*, Berlin 1987, pp. 170 ff. See also works by J. Symonides, *Terytorium państwowe w świetle zasady efektywności*, Toruń 1957, p. 260 and *Międzynarodowe problemy walki z zanieczyszczeniem rzek*, “Sprawy Międzynarodowe” 1972, no. 2, p. 47.

5 See e.g. F. von der Heydte, *Das Prinzip der guten Nachbarschaft in Völkerrecht*, Vienna 1960, p. 133 ff.; for an extensive catalogue of literature on this subject, see Doc. A/CN.4/348, p. 74.

6 M. Huber, *Ein Beitrag zur Lehre von der Gebietshoheit an Grenzflüssen*, “Zeitschrift für Völkerrecht” 1907, vol. 1, p. 159 ff. (Huber’s six principles are quoted, for instance, by J. Willisch, *State Responsibility*..., pp. 173–174.

7 J. Andrassy, *Les relations internationales de voisinage*, “79 Recueil des Cours...” 1951, vol. II, pp. 75 ff; see also B. Winiarski, *Principles généraux du droit fluvial international*, “45 Recueil des Cours...” 1933, vol. III, p. 79 ff.

8 J. Andrassy, *Les relations*..., p. 104 ff.

for determining the range of allowable activities by a State which could be reconciled with the good-neighbourliness principle. The activities are subject to assessment in each individual case. Therefore—as Symonides emphasised—establishing that a State has breached any legal norm applicable to neighbourly relations calls for taking into account the effects of the activities in question in each individual case, the possible claims of the neighbouring State and the degree of their satisfaction. In brief, it is necessary to assess possible damage and benefits.<sup>9</sup> The good-neighbourliness principle is thus undoubtedly an expression of the interdependence of the rights and interests of States bordering on each other and the requirement ensuing from this, namely that each State limit the activities that may cause damage outside its territory.

Mutual relations between States, and not only ones directly bordering on each other, should take into consideration both the freedom of one State to act in its own territory and the freedom of another from any transboundary consequences of such acts. The situation where the interests of adjoining States (following from their sovereign rule over their respective territories) often come into conflict, largely results from the fact that even if a State exercises due diligence it is not able to limit the possible harmful consequences of some kinds of activity to its own territory.<sup>10</sup> Of course, a State should not plan such consequences in advance and should therefore take—both at home and as part of international cooperation—appropriate measures to safeguard against any damage, and not only transboundary damage. With respect to some kinds of permissible activity, including the peaceful use of nuclear energy, such damage cannot be completely ruled out. On the other hand, nuclear energy cannot be given up entirely either. In fact, nuclear energy production—despite the awareness of potential radiation risks—has not been stopped. Moreover, the use of the sources of ionising radiation will certainly grow in many fields of

---

9 J. Symonides, *Prawnomiędzynarodowe problemy...*, p. 50.

10 See e.g. P.M. Depuy, *Due Diligence in the International Law of Liability*, in: *Legal Aspects of Transnational Pollution*, OECD, Paris 1977, p. 345.

science and the economy. Hence, conflicts of interest may arise between States over the implementation of the good-neighbourliness principle. It needs to be realised that the terms “good-neighbourliness principle” and “neighbouring State” are considered to be conventional concepts of a kind, in particular in relation to activities that are not prohibited by international law, such as the peaceful use of nuclear energy, or generally with respect to transboundary environmental pollution. What makes the damage potentially caused by such activities special is its wide-ranging nature, following from *distantiae loci*. Damage may be caused in areas far away from the source and the most badly affected State by no means has to be a neighbouring State.

Therefore, with respect to the damage caused by transboundary environmental pollution, the concept of a neighbouring State, as a State territorially connected to the State involved in activities causing such pollution, loses its original meaning and must be expanded to include all the States potentially at risk of suffering transboundary damage.<sup>11</sup> This appears to be justified if only by the provisions of the Convention on Long-Range Transboundary Air Pollution.<sup>12</sup> Consequently, the good-neighbourliness principle with respect to the international responsibility of a State for nuclear damage must be considered in its proper proportions, following from the transboundary and ecological character of the damage.<sup>13</sup>

### III

The authoritative juristic literature has taken a clear stance that the good-neighbourliness principle can be a possible criterion for resolving disputes over damage related to the exploration and exploitation of the seabed and

---

11 For more on this subject, see M. Kloepfer, *Internationalrechtliche Probleme Grenzer Kernkraftwerke*, “Archiv des Völkerrecht” 1987, Bd 25, Heft 3, p. 279.

12 Convention on Long-Range Transboundary Air Pollution (13 Sept. 1979). The text of the Convention can be found in “International Legal Materials” 1979, vol. 18.

13 T. Gadkowski, *Odpowiedzialność międzynarodowa państwa za szkodę jądrową*, Poznań 1990, p. 84, 100 ff.

ocean floors<sup>14</sup> or the use of water and air.<sup>15</sup> However, the criterion cannot be used with respect to any damage caused by such activities. The fundamental international law regulations on environment protection make it clear that material damage is the principal prerequisite for a State's international responsibility.<sup>16</sup> Furthermore, the literature expresses the view that assuming that any material damage is prohibited by the good-neighbourliness principle would reduce it to the literal understanding of the maxim *sic utere tuo ut alienum non laedas*. Additionally, it is assumed that the good-neighbourliness principle does in fact embody this maxim but with the reservation that it does not prohibit causing *any* damage but only significant damage.<sup>17</sup> This stance clearly refers to the conclusion of the decision in *Trail Smelter*, which clearly prohibits using a State territory in a manner that could cause *serious consequences* in the territory of a neighbouring State.<sup>18</sup> In other words, the authoritative juristic literature assumes, for instance with respect to the use of water and air, that certain damage, so-called negligible damage, is admissible in good-neighbourly relations; ergo, it admits that the principle can be applied flexibly.<sup>19</sup>

---

14 See e.g. T. Jasudowicz, "Dobre sąsiedztwo" w *Konwencji Prawa Morza z 1982*, "Prawo Morские" vol. IV, p. 64; B. Kwiatkowska-Czechowska, *Odpowiedzialność państwa wynikająca z badania i eksploatacji dan mórz i oceanów*, in: *Odpowiedzialność państwa w prawie międzynarodowym*, ed. R. Sonnenfeld, Warszawa 1980, p. 135.

15 E.g. I. Rummel-Bulska, *Użytkowanie wód śródlądowych dla celów niezeglownych w świetle prawa międzynarodowego*, Warszawa 1981, pp. 198 ff.

16 From the rich literature on the subject, see e.g. R. Pisillo-Mazzeschi, *Forms of International Responsibility for Environmental Harm*, in: *International Responsibility for Environmental Harm*, eds F. Francioni & T. Scovazzi, London–Dordrecht–Boston 1991, pp. 15 ff.; A. Kiss, D. Shelton, *International Environmental Law*, London 1991, pp. 541; *International Law and Pollution*, ed. D.B. Musgrave, Philadelphia 1991, p. 369; J. Ciechanowicz, *Zasady ustalania odszkodowania w prawie międzynarodowym publicznym*, Gdańsk 1989, pp. 23 ff.

17 Cf. e.g. I. Rummel-Bulska, *Użytkowanie wód śródlądowych...*, p. 147.

18 *Trail Smelter Arbitration*, Reports of International Arbitral Awards, III, p. 1905.

19 I. Rummel-Bulska, *Użytkowanie wód śródlądowych...*, p. 198. The author writes that 'In agreement with the good-neighbourliness principle, it is not prohibited to carry out any activity by a State in international waters, their tributaries and sub-tributaries that may cause harmful effects in the territory of other States, but only such activities that cause significant damage' (pp. 148–149). See there for relevant court decisions (p. 143).

However, the application of this assumption to the international responsibility of a State for nuclear damage should be approached with strong reservations for at least two important reasons. First, allowing certain kinds of damage and disallowing others gives rise to serious doubts when judging a specific case of actual damage. The positions adopted by interested States are of course divergent, for instance, in assessing the material damage caused by transboundary environmental pollution. Second, nuclear damage can hardly be considered negligible. Apart from the *distantiae loci* mentioned earlier, another special characteristic of such damage is its long-term consequences following from *dsitantiae temporis*, which means that they may appear a long time after the initial transboundary radiation pollution of the environment. Of course, the matter of assessing damages is also subject to controversy here, but as far as the principle itself is concerned, it must be assumed that a State is internationally responsible for all material nuclear damage.<sup>20</sup> Therefore, employing the good-neighbourliness principle as a possible criterion for claims for damages under a State's international responsibility for nuclear damage may not be conditional, i.e. applied only to significant or serious damage. The special nature of the activity causing damage and, above all, the special nature of the damage itself make it necessary to adopt a special responsibility regime in this case as well.

#### IV

The good-neighbourliness principle is not merely a theoretical construction but is actually universally invoked in international agreements, judicial decisions, and State practice.<sup>21</sup> States were obliged to conduct them-

---

20 See e.g. N. Pelzer, *The Impact of the Chernobyl Accident on International Nuclear Law*, "Archiv des Völkerrecht" 1987, Bd. 25, Heft 3; *Current Problems of Nuclear Liability in the Post-Chernobyl Period – A General Standpoint*, "Nuclear Law Bulletin" 1987, no. 39.

21 A rich list of examples can be found in: *Survey of State Practice to International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law*, ILC DOC. A/CN.4/384, pp. 15–18.

selves consistently in accordance with this principle by, for instance, the Preamble to the UN Charter, the 1970 Declaration on Principles of International Law and Article 74 of the UN Charter.<sup>22</sup> The obligation was straightforwardly adduced by Australia in the Nuclear Tests Case.<sup>23</sup> Some regional multilateral agreements also refer to the good-neighbourliness principle; for example, the Nordic Convention on the Protection of the Environment of 19 February 1974.<sup>24</sup> Similar clauses can be found in many bilateral agreements. This is especially true for border agreements but also others aimed at protecting a neighbouring state from the potential effects of pollution produced by allowable activity, e.g. the extraction of oil from shelf areas and ensuring information exchange on activities potentially affecting the weather. References to this principle can be also found in agreements on radiation protection in connection with nuclear energy use in border areas.<sup>25</sup>

Similarly to treaties, international judicial decisions also make clear references to the good-neighbourliness principle. They chiefly concern international responsibility for damage caused by industry, the use of rivers, fisheries, exploitation of the seabed and ocean floors, and nuclear arms tests.<sup>26</sup>

In the mutual relations between States, the good-neighbourliness principle was invoked many times as grounds for claims concerning transboundary damage in border areas caused by activity which was permitted but involved a high risk of damage. Two cases in point can be cited here: one involving damage in the territory of Switzerland due

---

22 T. Jasudowicz, *Zasada dobrego sąsiedztwa w Karcie Narodów Zjednoczonych*, "Acta Universitatis Nicolai Copernici" 1989, no. 196, p. 69 ff.; for international law assessment of this obligation, see *The Charter of the United Nations: A Commentary*, ed. B. Simm, Oxford 1994, p. 931.

23 *Nuclear Tests Case*, ICJ Reports 1971, p. 99; cf. K. Kocot, *Prawnomiędzynarodowe zasady zoologii*, Wrocław 1977, p. 40.

24 The text of the Convention can be found in *Selected Multilateral Treaties in the Field of the Environment*, ed. A. Kiss, Cambridge 1982, p. 403.

25 For examples of such agreements, see T. Gadkowski, *Odpowiedzialność międzynarodowa państwa...*, pp. 86–87.

26 For a list of decisions in these matters, see *ibidem*, pp. 87–88.

to an explosion in an Italian Munitions Factory in Arcisate<sup>27</sup>; and another also involving damage in Swiss territory due to its penetration by insecticides produced on the French side of the border.<sup>28</sup> In both cases, Swiss claims for damages referred clearly to the good-neighbourliness principle.

## V

As was mentioned earlier, conflicts between neighbouring states over the implementation of the good-neighbourliness principle are, in principle, unavoidable. They arose in the past and will certainly arise in the future, in particular over activities in border areas that are a source of potential transboundary damage being sustained by a neighbouring State. This is—it seems—a question of a greater significance as it concerns the location of permitted activity that involves a high risk of damage. Reuter has expressed the extreme view in this connection, namely that a State has no right to take up any activity in its territory that would be *abnormally dangerous* for other States, in particular for neighbouring States. He stressed that in such a situation international responsibility of a State is triggered not by the actualisation of the risk involved in the activity in question, but by the very fact of its conduct.<sup>29</sup> This stance was reflected in the Swiss claim for damages in the Arcisate case. The claim alleged that *abnormally dangerous activities* carried out by the State in a border area were tantamount to a breach *per se* of an international obligation.<sup>30</sup>

---

27 On this case, see P. Gugenheim, *La pratique suisse en matière de droit international public* 1956, “Schweizerisches Jahrbuch für Internationales Recht” 1957, vol. 14, p. 169.

28 On this case see L. Casflisch, *La pratique suisse en matière de droit international public* 1973, “Schweizerisches Jahrbuch für Internationales Recht” 1974, vol. 30, p. 147.

29 P. Reuter, *Principles de droit international public*, Hague 1962, p. 592.

30 See footnote 26.



## VI

Adopting this stance in respect of activity related to the peaceful use of nuclear energy is neither desirable nor possible. After all, such activity is permissible under contemporary international law.<sup>31</sup> This does not mean that all the potential consequences of such activity must have a similar character. Transboundary environmental pollution due to a nuclear accident, causing specific property damage to another State or other States, although related to permissible activity, is already a breach of the interest of these States protected by international law. Being permissible, the peaceful use of nuclear energy has at the same time certain special characteristics. They do not fully justify making an automatic transfer of institutions defining the international responsibility of a State for the harmful consequences of activities not prohibited by international law to the sphere of the international responsibility of a State. This is a result, first of all, of the special nature of nuclear damage. Although it admittedly has the characteristics of transboundary environment pollution, it also has consequences that are incomparable—in terms of their spatial and temporal range, and effects for people, property and the environment—with the consequences of other damage resulting from such pollution.

In addition, the very nature of the peaceful use of nuclear energy is quite different from the activity in question in the landmark decision in *Trail Smelter*. Frequently cited in the literature, this case formed an important element of the conception presented by Quentin-Baxter. The activity of the Trail Smelter, being the source of pollutants penetrating the U.S. territory, was an abnormally dangerous activity *per se*, giving rise to a special risk of transboundary damage. The industrial haze and resultant damage in the territory of the neighbouring State were thus inextricably bound to permissible —under international law—but abnormally dangerous activity in the territory of Canada. In fact, the

---

31 For more on this issue, see T. Gadkowski, *Odpowiedzialność międzynarodowa państwa...*, p. 55 ff.

peaceful use of nuclear energy does not involve a particularly high risk of damage. The risk, owing to the safety measures used, has been minimised, but not completely ruled out.<sup>32</sup> The crux of the matter lies somewhere else: on the one hand, the likelihood of damage is very low, but on the other, if it does happen after all, its potential consequences may have indeterminable proportions.<sup>33</sup> Moreover, nuclear damage takes place to the same or even greater degree in the territory of the State where the activity which is its source is conducted.

## VII

When applied to interstate relations, in practice the good-neighbourliness principle gives rise to a variety of problems, resulting largely from the conflict of interests between neighbouring States. In connection with peaceful nuclear activity, problems are often caused by the location of nuclear power plants and other installations, especially including nuclear waste burial sites in border areas.<sup>34</sup> This dimension of the good-neighbourliness principle proves to be of great practical importance and its international significance has been widely discussed in the literature.<sup>35</sup> Actually, it is much broader, as it involves the location of such activities in border areas, which poses a major risk, especially an ecological one, to a neighbouring State, in its opinion.<sup>36</sup> For example, in 1973, in

32 Cf. e.g. L. de La Fayette, *International Environmental Law and the Problem of Nuclear Safety*, "Journal of Environmental Law" 1993, vol. 5, no. 1, pp. 29 ff.

33 See M. Politi, *The Impact of the Chernobyl Accident on the State's Perception of International Responsibility for Nuclear Damage*, in: *International Responsibility...*, pp. 473 ff.

34 For a rich selection of reading on this subject, see *Siting of Nuclear Facilities. Proceedings of a Symposium Jointly Organized by IAEA and NEA*, Vienna 9–13 Dec. 1974, IAEA, Vienna 1975, p. 604.

35 For the latest on the subject see P. Gramegna, *Kernenergienutzung und Staatsgrenzen aus der Sicht des Nachbarrechts*, in: *Friedliche Kernenergienutzung und Staatsgrenzen in Mitteleuropa*, ed. N. Pelzer, Baden-Baden 1987, pp. 344–358; F.W. Schmidt, *Kernenergienutzung und Staatsgrenzen aus der Sicht des Nachbarstaats*, in: *Friedliche Kernenergienutzung...*, pp. 360–363.

36 Cf. e.g. M. Bothe, *Legal Problems of Industrial Siting in Border Areas and National Environmental Policies*, in: *Transfrontier Pollution and Role of States*, OECD, Paris 1981, pp. 79–97.

connection with Lichtenstein's plans to build a refinery in the Rhine Valley, Switzerland strongly protested that owing to international law principles, in particular the good-neighbourliness principle, it could not accept the construction plans that did not guarantee suitable protection of the environment from pollution in the future.<sup>37</sup>

It appears that from the good-neighbourliness principle, which—as was mentioned earlier—does not prohibit a State from making peaceful use of nuclear energy in its territory, certain obligations of a State can be deduced, in connection with locating relevant facilities in border areas. Above all, the obligations include notifying a neighbouring State in advance of plans to engage in such activity and consulting them together.<sup>38</sup> The chief purpose of consultations is to allow the neighbouring State to take into account the information obtained when making plans for developing and using its own border area.

## VIII

Therefore, it would be desirable at this juncture to consider the possibility of referring to the conception of primary obligations presented by Quentin-Baxter in his reports for the International Law Commission.<sup>39</sup> In this conception, the principal original norm is expressed by the maxim *sic utere tuo ut alienum non laedas*, establishing the obligation for a State to exercise its rights stemming from territorial sovereignty in

<sup>37</sup> L. Caflisch, *La pratique suisse...*, pp. 263–264.

<sup>38</sup> Cf. e.g. the provisions of Principle 20 of the Stockholm Declaration and UN General Assembly Resolution No. 2995 (XXVII) expressly referring to the good-neighbourliness principle. The obligation of mutual advance consultations in the field of environment protection is extensively discussed by K. Kocot, *Prawnomiędzynarodowe zasady...*, p. 125 ff. For the question of locating nuclear power plants in border areas and its assessment from the point of view of the very essence of the good-neighbourliness principle, see e.g. G. Handl, *Grenzüberschreiten—des nukleares Risiko und völkerrechtlicher Schutzanspruch*, Berlin 1992, p. 35 ff.

<sup>39</sup> *Reports on International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law*, mentioned by Ch. Tomuschat, *International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law: The Work of the International Law Commission*, in: *International Responsibility...*, p. 37 ff.

a manner not causing damage to the interests of another State or other States.<sup>40</sup>The primary obligations in Quentin-Baxter's conception are made up of four principal obligations of States: to prevent, to inform, to negotiate and to repair, related to transboundary damage caused by activity not prohibited by international law. The first three obligations are covered by contemporary nuclear law as rules of prevention, whereas the fulfilment of the fourth is actually hampered as far as claims for damages are concerned, having as their grounds a State's international responsibility. It must be made absolutely clear that international norms on indemnity for nuclear damage refer to both a State's international responsibility and the civil liability of the entity operating a nuclear facility. In nuclear law, a State's international responsibility is parallel to the civil liability of the operating entity and does not replace it, but supplements it in a sense. While civil liability has been regulated in complex international norms that continue to be developed, the international responsibility of a State under the fourth obligation has not been sufficiently regulated by positive law.<sup>41</sup>

The main international regulations on civil liability for nuclear damage, namely the Vienna Convention of 21 April 1963<sup>42</sup>, Paris Convention of 19 May 1960 (amended by two additional protocols of 1964 and 1982)<sup>43</sup>, Brussels Convention of 31 January 1963 Supplementary to the Paris Convention<sup>44</sup> and the Joint Protocol relating to the Application of the Vienna Convention and Paris Convention of 21 September 1988<sup>45</sup>, do not provide grounds for any specific international claims for damages as a result of nuclear damage. A proposal to amend the provisions of the

---

40 See ILC Doc. A/CN.4/360, pp. 23–30 (*Schematic Outline*).

41 For more on this responsibility, see T. Gadkowski, *International Liability of State for Nuclear Damage*, Poznań, Delft 1989, p. 150; J. Łopuski, *Liability for Nuclear Damage, An International Perspective*, Warszawa 1993, p. 67.

42 Convention text: UNTS 1063:265.

43 Convention text: UNTS 956:251 (Poland is not a party to it).

44 Convention text: UNTS 1041:350 (Poland is not a party to it).

45 Protocol text: *The International Law of Nuclear Energy, Basic Documents*, Part 2, Dordrecht–Boston–London 1993, p. 1369.

Vienna Convention drafted by the IAEA Special Committee does not regulate this matter either.<sup>46</sup> Hence, the question of adopting separate international regulation in this field remains open.

## IX

The process of introducing elements of the good-neighbourliness principle to international nuclear law gained momentum after the Chernobyl nuclear power plant disaster. As a matter of fact, it was then that the norms of this law noticeably began to develop. This is true for both bilateral and multilateral agreements, concerning wide-ranging cooperation in the field of the peaceful use of nuclear energy and the activities of international organisations, especially the International Atomic Energy Agency (IAEA), and improvements made by States to their safety measures and supervisory institutions. The most important effect of these efforts is seen in two conventions prepared under the auspices of the IAEA and adopted by the IAEA General Conference at its special session on 26 September 1986. These are: the Convention on Early Notification of a Nuclear Accident<sup>47</sup> and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.<sup>48</sup>

Particularly important obligations, especially when viewed from the perspective of discharging of the duties following from the good-neighbourliness principle, are included in the Convention on Early Notification of a Nuclear Accident. Under Article 1, it applies in the event of any accident involving the facilities or activities of a State Party or of persons or legal entities under its jurisdiction or control from which a release of radioactive material occurs, or is likely to occur, and that has resulted or may result in an international transboundary release which is significant for the radiological safety of another State. This scope of application of

---

46 On the work of the Committee, see J. Łopuski, *Liability for Nuclear Damage...*, p. 25 ff.

47 Convention text: *The International Law...*, p. 1269.

48 Convention text: *The International Law...*, p. 1277.

the Convention calls for considering three important issues. First, the scope covers the entire activity of a State related to the use of nuclear energy. Hence, the Convention applies to transboundary radiological effects produced by both peaceful and military nuclear activity. Second, the Convention applies to any accident involving the facilities or activities of a State Party or of persons or legal entities under its jurisdiction or control and hence, also to any nuclear activity conducted outside the territory of a State. Third, the Convention applies to all accidents involving facilities or activities that result or may result in a transboundary release of radioactive substances possibly posing a significant risk for another State. This wording, being a practical reflection *sui generis* of the conclusion of the decision in *Trail Smelter* is—in the opinion of the present author—a major shortcoming of the Convention, because it admits a completely erroneous and actually dangerous possibility of grading radiological risks in terms of their harmful effects in the territories of other States. Moreover, it begs the question about the legal and moral entitlement of the State engaged in the nuclear activity that has caused an accident to decide about the degree of risk therefrom for other States.

The Convention (Article 2) makes States notify forthwith the IAEA and other States that may be physically affected by the accident about its occurrence, nature, and the time and place (Article 2(a)). Furthermore, in the case of a nuclear accident, a State has to immediately give other States and the IAEA any available information relevant to minimising the radiological consequences of the accident (Article 2(b)). Moreover, where possible, a State has to give further information without delay upon request from interested States. In addition, the Convention also provides for a duty to notify in the event of nuclear accidents other than those specified in Article 1. They may include events when no transboundary release of radioactive substances occurs to the extent that, in the opinion of the State where the incident takes place, it may pose a significant radiological risk for other States (Article 3).

The fact that the Convention provides for a complex system of notification about a nuclear accident and consequent risk of transboundary radiological contamination of the territory of other States is only to be praised. The Convention is the first multilateral international law regulation to be so clear about the obligation of a State *to inform* in connection with potential or actual nuclear damage. The Convention, admittedly, does not use the concept of nuclear damage, employing instead the broad concept of transboundary radiological consequences, which in fact may bring about specific, more or less determinable damage. The obligation of a State to notify other States that a nuclear accident has occurred and give them the information mentioned above is, therefore, a specific treaty obligation of State-Parties, clearly set out in an international agreement. Its neglect by a State may result in specific international law consequences, as in the event of non-fulfilment or improper fulfilment of other obligations.

The provisions of the Convention still, however, do not offer formal treaty grounds for claims for damages following nuclear damage under international law. In other words, a State Party's failure to meet its obligations under the Convention is not a source of its international responsibility for nuclear damage. When, however, the provisions of the Convention are compared with the existing regulations of international environmental protection law, which for the most part are soft law, or even with the Convention on Long-Range Transboundary Air Pollution mentioned earlier, considerable progress can no doubt be noticed in the development of international norms. The Convention on Early Notification of a Nuclear Accident has expressly institutionalised one of the principal elements of Quentin-Baxter's conception of primary obligations. It has been applied to a potential risk or actual occurrence of transboundary nuclear damage, and it is from this angle that the Convention should be assessed as a milestone in the development and codification of international nuclear law norms.

**X**

However, the greatest practical importance of the Convention lies in Article 9, which states that in furtherance of their mutual interests, State Parties may consider the conclusion of bilateral or multilateral arrangements relating to the subject matter of the Convention. They may include, above all, bilateral agreements between neighbouring States on early notification of a nuclear accident and exchange of information in this regard. The practice that has evolved in this respect in the last three years deserves special praise as it entails situations where States negotiate without undue delay to establish suitable treaty obligations. An example in point is the great activity of the Scandinavian countries in this field.<sup>49</sup>

Against this background, Poland's treaty activity looks particularly good. Our country has entered into relevant treaties on the exchange of information and cooperation in the field of nuclear safety and radiological protection, and on the issue of early notification of nuclear accidents with eight European States, including almost all its neighbours. The first agreement was concluded with Denmark on 22 December 1987 and concerned the exchange of information and cooperation in the field of nuclear safety and radiological protection.<sup>50</sup> The agreements contain typical provisions derived from the Convention and others of a broader import. They oblige State Parties to inform one another about nuclear reactors that are planned, under construction and operating, and about nuclear waste burial sites and radiological risk warning systems (Article 1). Moreover, they make it incumbent on the parties to inform one another directly and without delay of accidents in nuclear facilities or nuclear-activity-related facilities if a release of radioactive substance may have consequences for the territory of another State (Article 3(1)). This obligation also covers situations of extraordinary increase in radiation levels in the territory of a given State which is not caused by

---

49 For more on this practice see *Bilateral, Regional and Multilateral Agreements Relating to Cooperation in the Field of Nuclear Safety*, IAEA, Vienna 1990, Legal Series No. 15.

50 For the text of the agreement see "Nuclear Law Bulletin" 1988, no. 41, pp. 49–61.



a nuclear accident or other nuclear activity conducted in the territory of this State (Article 3(2)). The agreement also provides for the obligation of State Parties to hold regular consultations on the scientific foundations and methods of radiation protection of people exposed due to their occupations, the population at large and the environment (Articles 2 & 4).

These provisions make it necessary to fulfil the typical primary obligations mentioned earlier. Similar obligations are provided for in the other seven agreements to which Poland is party. These are agreements with the following countries: Norway, Austria, Ukraine, Belarus, the Russian Federation, Lithuania and Slovakia.<sup>51</sup>

This set of agreements, known as the ‘Post-Chernobyl Treaties’, is the most representative for international nuclear law as far as the important components of the good-neighbourliness principle are concerned.

### References

“*Dobre sąsiedztwo*” w *Konwencji Prawa Morza z 1982*, “*Prawo Mor-  
skie*” vol. IV, Wrocław–Warszawa–Kraków 1990.

“*Nuclear Law Bulletin*” 1988, no. 41.

Andrassy J., *Les relations internationales de voisinage*, “79 *Recueil des  
Cours...*” 1951, vol. II.

*Bilateral, Regional and Multilateral Agreements Relating to Coopera-  
tion in the Field of Nuclear Safety*, IAEA, Vienna 1990, Legal Series  
No. 15.

Bothe M., *Legal Problems of Industrial Siting in Border Areas and Na-  
tional Environmental Policies*, in: *Transfrontier Pollution and Role of  
States*, OECD, Paris 1981.

Casflisch L., *La pratique suisse en matière de droit intenational pub-  
lic* 1973, “*Schweizerisches Jahrbuch für Internationales Recht*” 1974,  
vol. 30.

---

<sup>51</sup> As of 15 May this year, according to information obtained from the National Atomic En-  
ergy Agency.

- Ciechanowicz J., *Zasady ustalania odszkodowania w prawie międzynarodowym publicznym*, Gdańsk 1989.
- Convention text: UNTS 1041:350 (Poland is not a party to it).
- Convention text: UNTS 1063:265.
- Convention text: UNTS 956:251 (Poland is not a party to it).
- Current Problems of Nuclear Liability in the Post-Chernobyl Period – A General Standpoint*, “Nuclear Law Bulletin” 1987, no. 39.
- Depuy P.M., *Due Diligence in the International Law of Liability*, in: *Legal Aspects of Transnational Pollution*, OECD, Paris 1977.
- Gadkowski T., *Odpowiedzialność międzynarodowa państwa za szkodę jądrową*, Poznań 1990.
- Gadkowski T., *International Liability of State for Nuclear Damage*, Poznań, Delft 1989.
- Gadkowski T., *Odpowiedzialność międzynarodowa państwa...*, p. 55 ff.
- Gramegna P., *Kernenergienutzung und Staatsgrenzen aus der Sicht des Nachbarrechts*, in: *Friedliche Kernenergienutzung und Staatsgrenzen in Mitteleuropa*, ed. N. Pelzer, Baden-Baden 1987.
- Gugenheim P., *La pratique suisse en matière de droit international public 1956*, “Schweizerisches Jahrbuch für Internationales Recht” 1957, vol. 14.
- Handl G., *Grenzenüberschreiten—des nukleares Risiko und völkerrechtlicher Schutzanspruch*, Berlin 1992.
- Heydte F. von der, *Das Prinzip der guten Nachbarschaft in Völkerrecht*, Vienna 1960.
- Huber M., *Ein Beitrag zur Lehre von der Gebietshoheit an Grenzflüssen*, “Zeitschrift für Völkerrecht” 1907, vol. 1.
- International Law and Pollution*, ed. D.B. Musgrave, Philadelphia 1991.
- Jasudowicz T., “Dobre sąsiedztwo” w *Konwencji Prawa Morza z 1982*, “Prawo Morskie” vol. IV.
- Jasudowicz T., *Pojęcie dobrosąsiedztwa w stosunkach międzynarodowych*, “Sprawy Międzynarodowe” 1977, no. 4.

- Jasudowicz T., *Zasada dobrego sąsiedztwa w Karcie Narodów Zjednoczonych*, "Acta Universitatis Nicolai Copernici – Prawo XXVIII", Toruń 1990.
- Kiss A., Shelton D., *International Environmental Law*, London 1991.
- Kloepfer M., *Internationalrechtliche Probleme Grenzer Kernkraftwerke*, "Archiv des Völkerrecht" 1987, Bd 25. Heft 3.
- Kocot K., *Prawnomiędzynarodowe zasady zoologii*, Wrocław 1977.
- Kwiatkowska-Czechowska B., *Odpowiedzialność państwa wynikająca z badania i eksploatacji dan mórz i oceanów*, in: *Odpowiedzialność państwa w prawie międzynarodowym*, ed. R. Sonnenfeld, Warszawa 1980.
- La Fayette L. de, *International Environmental Law and the Problem of Nuclear Safety*, "Journal of Environmental Law" 1993, vol. 5, no. 1.
- Łopuski J., *Liability for Nuclear Damage, An International Perspective*, Warszawa 1993.
- Międzynarodowe problemy walki z zanieczyszczeniem rzek*, "Sprawy Międzynarodowe" 1972, no. 2.
- Nuclear Tests Case*, ICJ Reports 1971;
- Pelzer N., *The Impact of the Chernobyl Accident on International Nuclear Law*, "Archiv des Völkerrecht" 1987, Bd. 25, Heft 3.
- Pisillo-Mazzeschi R., *Forms of International Responsibility for Environmental Harm*, in: *International Responsibility for Environmental Harm*, eds F. Francioni & T. Scovazzi, London–Dordrecht–Boston 1991.
- Politi M., *The Impact of the Chernobyl Accident on the State's Perception of International Responsibility for Nuclear Damage*, in: *International Responsibility for Environmental Harm*, eds F. Francioni, T. Scovazzi, London–Dordrecht–Boston 1991.
- The International Law of Nuclear Energy, Basic Documents, Part 2*, Dordrecht–Boston–London 1993.
- Reuter P., *Principles de droit international public*, Hague 1962, p. 592.
- Rummel-Bulska I., *Użytkowanie wód śródlądowych dla celów niezeglownych w świetle prawa międzynarodowego*, Warszawa 1981.

- Schmidt F.W., *Kernenergienutzung und Staatsgrenzen aus der Sicht des Nachbarstaats*, in: *Friedliche Kernenergienutzung und Staatsgrenzen in Mitteleuropa*, ed. N. Pelzer, Baden-Baden 1987.
- Selected Multilateral Treaties in the Field of the Environment*, ed. A. Kiss, Cambridge 1982.
- Siting of Nuclear Facilities. Proceedings of a Symposium Jointly Organized by IAEA and NEA*, Vienna 9–13 Dec. 1974, IAEA, Vienna 1975.
- Sorensen M., *Principles de droit international public*, “101 Recueil des Cours de l’Académie de Droit International de la Haye” 1960, vol. III.
- Symonides J., *Terytorium państwowe w świetle zasady efektywności*, Toruń 1957.
- The Charter of the United Nations: A Commentary*, ed. B. Simm, Oxford 1994.
- Tomuschat Ch., *International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law: The Work of the International Law Commission*, in: *International Responsibility for Environmental Harm*, eds F. Francioni & T. Scovazzi, London–Dordrecht–Boston 1991.
- Trail Smelter Arbitration*, Reports of International Arbitral Awards, III.
- Willisch J., *State Responsibility for Technological Damage in International Law*, Berlin 1987.
- Winiarski B., *Principles généraux du droit fluvial international*, “45 Recueil des Cours...” 1933, vol. III.

## SUMMARY

### **The Principle of Good-Neighbourliness in International Nuclear Law**

The paper is an English translation of *Zasada dobrego sąsiedztwa w międzynarodowym prawie atomowym* by Tadeusz Gadkowski, published originally in Polish in 1997. The text is published as a part of a ju-

bilee edition of the “Adam Mickiewicz University Law Review. 100th Anniversary of the Department of Public International Law” devoted to the achievements of the representatives of the Poznań studies on international law.

Keywords: public international law, international nuclear law, the principle of good-neighbourliness.

Prof. Tadeusz Gadkowski

DOI 10.14746/ppuam.2021.12.10

