



International Law Regimes for Liability

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Liability in international law

- Distinction responsibility (unlawful activities) and liability (lawful activities)
- State responsibility
 - Principle: every wrongful of a state entails the international responsibility of that state (ILC Draft responsibility, Art. 1)
 - Defences:
 - Acts of war etc
 - Wholly caused by act/omission done with intent to cause damage by third party



Liability in international law

- State responsibility (ctd)
 - Remedies:
 - Discontinue wrongful conduct
 - Guarantees of non-repetition
 - Full reparation for injury caused
 - Prevent repetition and specify future conduct (*Trail Smelter* case)



Civil liability

- Nuclear energy schemes principles:
 - Absolute liability (war, natural disaster can be exceptions).
 - Liability channelled exclusively to the operator of nuclear installation or ship.
 - Limitations may be placed on amount and duration.
 - Payment to prescribed limit supported by compulsory insurance or security held by operator and guaranteed by state.



Civil liability (ctd)

- Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993.
 - Objective: The Convention aims at ensuring adequate compensation for damage resulting from activities dangerous to the environment... (Art. 1)
 - Dangerous activity means (...)
 - GMOs which as a result of the properties of the organisms (...) pose a significant risk for man, the environment or property. (Art. 2)
 - Damage: loss of life, personal injury, loss or damage by impairment of the environment (limited to costs of measures of reinstatement), cost of preventive measures (Art. 7)



Relevance of liability schemes in international law

- Limitations of liability schemes in public international law
 - Limited case law
 - Limited development of principles relating to liability (and limited focus on environment)
 - State responsibility concerned with state-state obligations
- Increasing emphasis of international environmental law on preventive measures as an alternative



Other relevant ‘upstream’ schemes

- Polluter Pays Principle (PPP) – Prevention – precautionary principle
 - can be used for
 - Choice of technology
 - Prohibition of specific activities
 - Determination of compensation amount
- Criminalisation of illegal activities
 - Basel Convention (Art. 4.3)



Liability in the case of GMOs

- Liability for environmental or other damage following legal commercialisation of GMOs
- Liability for illegal commercialisation of GMOs
- Environmental contamination and ‘reverse’ liability of farmers (land-owners)

WELFARE



GMOs: Liability issues

- Contamination with adverse consequences
 - Strict environmental issues
 - Food safety/health
- Contamination without immediately apparent adverse consequences on the environment
 - Impact on organic crops



GMOs: Liability issues

- Possible uses of existing principles
 - All appropriate measures to prevent significant harm to be taken (cf. ILC liability draft Art 3)
 - Preventive measures to include assessment of overall advantages of social, economic and technical character as well as assessment of means to prevent such harm or restore the environment (cf. ILC liability draft, Art. 10)
 - Liability for any environmental damage (cf. 1992 oil pollution, Art. III)



GMOs: Liability issues

- Possible uses of existing principles (ctd)
 - Preventive measures
 - Dis/Incentives for introduction of GMOs through use of biosafety clauses in intellectual property laws (e.g. Thailand)



‘Reverse’ liability of farmers

- Issue of control over land
- Link real property – intellectual property
- Link biosafety – patents