



LIABILITY AND REDRESS: Some Basic Concepts and Facts

Secretariat, Convention on Biological Diversity

Workshop material No. 1



Convention on
Biological Diversity

INTERNATIONAL YEAR
OF FORESTS • 2011



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1. Liability

Liability is an obligation of a person to provide compensation or take redress measures for damage resulting from an action or a situation for which that person is deemed to be responsible under the applicable law.

2. Damage

- Loss of life or harm to health – personal injury
- Loss or damage to property
- Loss of income - harm to economic interests
- Environmental damage
- Biodiversity damage

3. Types of liability

State liability

Liability of a state under rules of international law

Civil liability

Liability of a person under rules of national law adopted pursuant to international treaty obligations

Administrative

Liability/obligation of a person under rules of administrative law that confers powers and responsibilities on public authorities

4. Standards of liability

Fault – based liability

Strict liability

Absolute liability

5. Common elements/Issues of a liability regime

- Defining damage
- Establishing the standard of care
- Establishing the measure of damage
- Identifying the person against whom claim should be brought
- Determining the claimant
- Designating the forum where claim should be brought
- Determining the remedies available

6. Purpose of liability rules

- Preventive - an incentive economic instrument - encouraging compliance with environmental obligations
- Corrective - require restoration of the degraded or polluted environment
- Absorptive - internalizing environmental and other social costs into production or other processes
- Punitive - Imposing sanctions against wrongful conduct

7. International Environment-Related Liability Instruments

State liability

Instrument	Status
1972 Convention on International Liability for Damage Caused by Space Objects	In force since 1 September 1972
1982 United Nations Convention on the Law of the Sea (UNCLOS) (Articles 139 (the Area) and 235)	In force since 16 November 1994
1991 UN Security Council Resolution 687 (Obligation to make reparation by Iraq for damage (including environmental damage) caused by its invasion of Kuwait)	In force since its adoption
2005 Liability Arising from Environmental Emergencies in the Antarctic (Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty)	Not in force

7. International Environment Related Liability (cont'd)

Civil liability

Instrument	Status
1963 IAEA Vienna Convention on Civil Liability for Nuclear Damage	In force since 12 November 1977
1989 UNECE Convention on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels	Not in force
1992 IMO Convention on Civil Liability for Oil Pollution Damage (replaced the 1969 Convention)	In force since 30 May 1996
1999 Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal	Not in force

7. International Environment-Related Liability (cont'd)

Civil liability

Instrument	Status
1993 Council of Europe Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment	Not in force
2001 IMO International Convention on Civil Liability for Bunker Oil Pollution Damage	In force since 21 Nov. 2008
2003 UNECE Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters	Not in force
2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 1996 (HNS Convention)	Not in force

7. International Environment-Related Liability (cont'd)

Administrative

Instrument	Status
2004 EU Directive on Environmental Liability with regard to the prevention and remedying of environmental damage	In force since 30 April 2004 Transposition - 30 April 2007
2010 Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety	Not in force

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