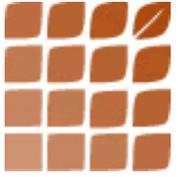


Suggestions for the development of an international liability and redress regime

Dr Usha Ramanathan
&
Dr Philippe Cullet
IELRC

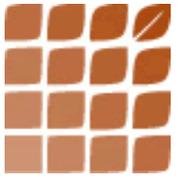
25 Feb. 2004

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Outline

1. General issues and international law-related issues
2. Issues relating to ‘incidents’, reparation and penalties



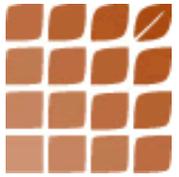
State responsibility

- Limits of existing principles (no treaty framework)
- Limits of general principles for addressing environmental harm
- Relevance of state responsibility rules (e.g. case of food aid)
- State responsibility to be supplemented by civil liability



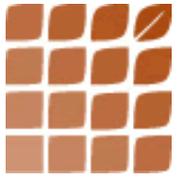
Civil liability

- Missing general framework
- Existing ‘sectoral’ liability regimes constitute an appropriate model
- Existing national laws indicate that a separate regime feasible and necessary



General features of civil liability regime

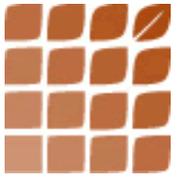
- Environmental objectives: precaution and conservation
- Socio-economic objectives: coexistence, consumer choice



Adoption of principles for liability from existing treaties

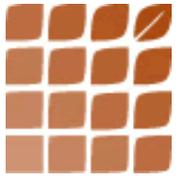
- Strict liability
- Liability channelled exclusively to the person commercialising/exporting
- Limitations may be placed on amount and duration (with subsidiary state responsibility)
- Payment to prescribed limit supported by insurance
- Different recognised types of damages covered

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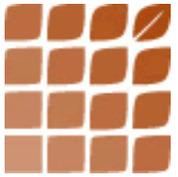
Supplementary avenues

- Criminal sanctions
- Dis/Incentives for introduction of GMOs through use of biosafety clauses in intellectual property law



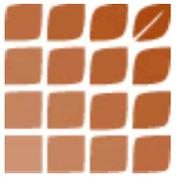
National Level

- Recognising ‘mass tort’
- ‘No fault’ for immediate relief – perhaps from a TNC Fund that may be established under the Protocol.
- Environmental clean up, the responsibility of the corporation, with penalties for every day of continuing damage.
- Errant corporations and the freezing of accounts



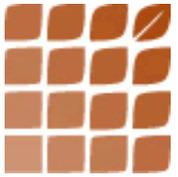
National Level (ctd)

- ‘Restorative’ justice to victims which goes beyond immediate relief and monetary compensation.
- Explore other prescriptions of penalties including outlawing goods produced by an offending corporation, tacit hypothecation, dismantling an offending corporation, restraining the corporation’s activities until remedial environmental activities
- Providing scope for criminal law where damage is with knowledge, intention, systemic or dictated or permitted by policy.



National Level (ctd)

- Establishing jurisdiction, providing for lifting the corporate veil, tracking the ‘disappearing’ corporation.
- The regime of fault liability, negligence, no fault and strict liability, absolute liability, and the notions of
 - Safety,
 - Deterrence, and
 - Enforcementmust be woven into the law.



National Level (ctd)

- Two aspects of law often contribute to the conduct of business by the TNCs in the developing world.
 - One, the lower standards legislated in the developing countries would, for instance, in the matter of the environment.
 - Two, the deficits that have magnified in implementing and enforcing the existing standards. The problems of deteriorating standards of environmental protection and the reduced status of safety have to be accounted for in an international regime.
- Giving a relevance to Victim Testimony.
- Using Victim impact statements.

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