ABSTRACT OF INDEPENDENT EXPERT PAPERS ON LIABILITY AND REDRESS

International Civil Liability for Environmental Damage: Lessons Learned –

Katharina Kummer Piery, Kummer EcoConsult
Dr. Kummer Piery provides an analysis of lessons learned from previous experiences in the negotiation of international liability instruments in the environmental field. Using the Basel Protocol on liability and compensation as a case-in-point, the author points out a number of factors that contribute to difficulties in the negotiation, ratification and entry into force of international civil liability regimes. She indicates that the Biosafety Protocol gives rise to even another constraint, as it has not yet been established what damage, if any, is caused by LMOs. While consideration of several factors can contribute to furthering negotiations for an international civil liability regime, experience shows that even if these conditions are met, the process can be very time consuming and costly, and there is danger that it will never enter into force.

Liability and Redress: Existing Legal Solutions for Traditional Damage –

Professor Lucas Bergkamp, Hunton&Williams
Professor Bergkamp argues that the scope of the Biosafety Protocol does not cover traditional damage (i.e. personal injury or health damage, and property or other economic damage). This type of damage should be handled by existing liability mechanisms and regimes, including international arbitration institutions or national courts of the jurisdictions where defendants and claimants reside. The author also demonstrates that adequate mechanisms exist for the handling of damage claims, and therefore questions the need and desirability of an international liability instrument. He also calls for capacity-building in states that do not have adequate general civil liability regimes.

Environmental Liability Regimes: Approaches and Best Practices –

Laura van der Meer, International Environmental Resources
Ms. Van Der Meer explores how damage to biodiversity is addressed in existing national, regional and international liability systems. In the absence of any evidence of actual damage caused by LMOs, the author argues that a general environmental liability regime at a national or international level is a more practical and efficient way of dealing with liability and redress in relation to possible environmental damage relation to LMOs. A general approach allows for the establishment of a comprehensive and integrated approach to environmental liability that ensures there is legal responsibility and redress for all actual damage to biodiversity, whereas a sector-specific liability instrument only covers damage resulting from a limited number of activities.

Guide for Countries Considering Liability and Redress for LMOs –

Rachel G. Lattimore, Arent Fox Kintner Plotkin and Kahn, PLLC
Ms. Lattimore identifies a series of questions that can assist countries with efforts to effectively analyze their existing national situations with respect to liability and redress as a critical basis for governmental decision-making on this topic. Questions should be used by countries to assess their existing legal situation (i.e. does a traditional liability regime exist? Is there already a product liability regime or an environmental protection regime?) before pursuing the development of new liability rules.
Implications of Proposed TWN and OAU Model Liability Language –

Stanley H. Abramson, Arent Fox Kintner Plotkin and Kahn, PLLC
Mr. Abramson asserts that the kind of liability provisions proposed in the TWN and OAU models will lead to the establishment of a discriminatory liability system that creates uninsurable risk without scientific justification, that in turn increases barriers to biotechnology research, foreign direct investment, food aid, technology transfer and cooperation. Issues with the models include the lack of a precise scope and definition of harm, the inclusion of only strict liability, an overly broad designation of potentially liable parties, and an ill-defined limitations period for bringing action. Inserting the kind of liability provisions proposed by the TWN and OAU into national or international biosafety frameworks is a dangerous departure from widely adopted and longstanding legal regimes.

Analysis of the Applicability of Existing Civil Law to the Rome Scenarios–

Professor Lucas Bergkamp, Hunton&Williams
Professor Bergkamp’s paper analyses how existing civil law regimes apply to the transboundary movement of LMOs using four hypothetical situations developed at a Biosafety workshop in Rome, December 2002. Damage is assumed for the sake of demonstration, but it should be noted the potential for any harm to health, safety or the environment as a result of LMOs is virtually non-existent based on current knowledge. The author points out that scope of any liability and redress regime under Biosafety Protocol is limited to damages to biodiversity and that a general environmental liability and redress regime should be preferred over one that covers only biodiversity damage caused by transboundary movement of LMOs.