Recent Trends in the Development of International Civil Liability

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I. Introduction

I.1. Environmental Risks

With the rapid technological and industrial development in the world and the increasing intercourse between countries and people - especially in the fields of technology and trade - the risks of environmental catastrophes with international, i.e. transboundary, consequences increase all the time. This is unfortunately the price that our consumer society has to pay for its demands for a higher standard of living. There exists a conflict between technological progress and the environment.¹

The use of nuclear power as a source of energy,² the development and use of gases, liquids and other chemical elements and compounds in industry,³ the transport of dangerous chemicals and pollutants, the exploitation of subterranean natural resources and, more recently, the exploitation of space constitute an increasing risk.⁴ The problems and the risks are global. The whole human race regardless of where people live and national boundaries are threatened with pollution risks. Pollutants do not respect political boundaries, and therefore, freely cross national borders causing significant contamination for all neighbouring countries. International catastrophes normally give rise to problems which in their intensity and extent greatly exceed more "locally limited" accidents. Contingencies for combatting such disasters, for providing support and for evacuating threatened populations are subjected to great test, personal injuries and damage to property as well as damage to the environment itself are extensive, difficult to evaluate and above all to "repair", etc.

We have experienced a number of accidents with serious transnational consequences. In the Chernobyl disaster of April 26, 1986 there was an explosion at a nuclear plant. The atomic reactor overheated and exploded, spreading radioactive particles across Central Europe and the Nordic countries. As a result of the accident there were different kinds of damage, including damage to property and economic losses (e.g. radioactive meat had to be destroyed and vegetables, milk products, fish etc. could not be used for human consumption). No effects on human life seem to have been registered outside the Soviet Union.⁵ However, it is difficult to prove the long-term effects of radiation.⁶ In a fire at Sandoz’ warehouse in Basel on November 1, 1986 a cloud of poisonous gases spread over the city and an estimated 10-30 tons of mercury and other toxic chemicals were washed into the Rhine along with

the water used to extinguish the fire. Considerable damage to the river’s ecology resulted, especially to fish.

Serious accidents with international consequences have also occurred in conjunction with transport. When the Amoco Cadiz sank off the French coast in 1978 more than 220,000 tons of crude oil were released into the sea and a large section of the French coast was badly polluted. After the tanker Exxon Valdez ran aground in March 1989 off the coast of Alaska more than 240,000 barrels of crude oil were spilled into the sea. The oil polluted more than 1,000 km of beaches in Prince William Sound and also thousands of square kilometres of sea. It is difficult to estimate the damage which the oil pollution has caused to the fauna and flora on land and in the water. It is to be feared that the entire marine ecosystem has been impaired for decades to come, if not actually completely destroyed in some areas.7

In addition to the release of toxic compounds in accidents occurring in production, transport, storage, and waste-handling, our health, safety, and environment are also threatened by both gradual spills (leakage or seepage from cisterns, tanks or containers) and ‘routine discharges’ from permitted industrial activity (for example, emissions, discharges or waste generation on a continuous or repetitive basis).8 Pollution of the Baltic Sea is an example.

1.2. Need for International Co-operation

The legal and insurance problems pursuant to environmental impairment have been solved in diverse ways in different countries. There are different systems of liability, insurance arrangements (both liability insurance and insurance taken out by the injured party), etc. Moreover, legislation covering damage to the environment in most countries is heterogeneous and to some extent ambiguous.9

Because of the increasing integration between countries and people and in view of the ever greater risks of transboundary environmental impairment national legislation and systems of liability should be as uniform as possible. This works to the advantage of the person suffering damage (in this way “forum shopping” and other jurisdictional problems are avoided), whereas variations in the legislation applied reduce protection. A transboundary environmental impairment affects several legal systems.10 Uniform liability systems are also an advantage for liability insurers and enhance their potential for providing better protection.11

Consequently problems contingent upon environmental impairment cannot be solved only from the national perspective. With the advances made in industry and the resulting potential transboundary damage problems of compensation have taken on an international character. I am thinking of situations where, for example, extensive transboundary damage is caused by several sources of pollution.12

This underlines the need for international co-operation in the form of conventions, bilateral agreements, and other international co-operation. The international legal framework should be drastically improved and adapted to existing and future needs. Effective international regulation of these questions of course depends on persuading as many countries as possible to participate in the system.

Environmental questions have really formed the topic of general and serious discussion only since the 1960s when the environment began to be accorded increasing