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ACCOUNTABILITY AND LIABILITY FOR CROSS-BORDER ENVIRONMENTAL DAMAGE: A LEGAL EXAMINATION

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ABSTRACT

It is now commonly acknowledged that a wide range of human activities, such as the movement and trade of certain items and products internationally, have detrimental effects on protecting the environment throughout the world in all of its settings. Given this, the query assumes particular importance in terms accountability as well as a remedy for environmental harm that crosses borders. The issue of environmental harm and state responsibility is positioned within the framework of general international law, which has long been a topic of scholarly discussion. This is due to global regulatory efforts aimed at shaping transnational liability rules. Recent issues with technology-driven business initiatives have made the legal discussion more nuanced. In order to better understand customary international law, This research aims to define and investigate the notions of national accountability and global culpability. It also evaluates the key characteristics of these concepts as they arise from the application of treaties, court rulings, expert comments, and the most recent work done in this area by the Commission on International Law. In order to outline the key components of and possible issues with the current legal methods to the settlement of transboundary damage, it also examines a few of the multilateral civil liability treaties that are in place and address issues of transnational harm.

KEYWORDS: Trade, International Law Commission, Transnational, Transboundary, Liability, Environmental, Treaties

INTRODUCTION

It is now widely acknowledged that while engaging in lawful developmental activities within their own borders, States have a responsibility to defend the rights of other States. In this sense, the bar for accountability has gradually been raised over time, through legal rulings and governmental policy, to address transboundary environmental damage, culpability for international environmental harm is defined in legal academic literature as including both:

(i) the notion that states are accountable for transgressions of international law

(ii) culpability for harm originating from actions allowed by worldwide law.

While both notions aim to provide a method for remedy for harm caused, state accountability and international liability deal with different and unique challenges. The former addresses transnational crimes or violations of international law, whilst the latter deals with the detrimental circumstances that result from actions that are allowed by international law.

STATE RESPONSIBILITY: AN OVERVIEW

Within the framework of classical international law, the idea of state responsibility arose to handle the connection between a state and its inhabitants in other lands. In the latter part of the 20th century, the immunities accorded by treaties governing the way diplomats are treated, and the right to an innocent journey, and the concept of non-discrimination against aliens were expanded to encompass any transnational crime. A crucial tool for guaranteeing legal accountability and responsibility for transnational wrongdoing is the idea of state responsibility.

It is the fundamental idea that a State is liable under international law in interstate disputes. Actually, the applicability of the idea of the main source of state responsibility is the possibility of a state being brought before international judicial tribunals for violating its legal responsibilities on a global scale. There may be legal repercussions from this kind of transgression of international agreements. The legal duties may result from international agreements that a nation has ratified or from international customary law. As a result, when a state breaks a bilateral, regional, or multilateral convention or customary international law, it is responsible. It has been elaborated by a number of international arbitral awards and court rulings that have significantly influenced the conversation about the parameters of state accountability. The growing body of worldwide law pertaining to state accountability has a great deal to thank these rulings by judges. Numerous of these rulings have improved and deepened our knowledge of the standards that should be followed when tackling the issue of transboundary environmental damage. It would be helpful to consider some of the significant turning points within the steady advancement of international law regarding state liability for environmental harm that crosses international borders in this context.

1. Making Neighbourly Conduct Lawful: Need to Take Care

Sic utere tuo ut alienum non laedas, a legal principle that essentially asserts that states cannot utilise or tolerate the usage of their territory to the harm of the rights and justifiable objectives of different states. The idea of "abuse of rights" in civil law and this concept are closely connected. Therefore, it is the responsibility of the nations to take all necessary precautions when creating plans for domestic development in order to avoid impeding the legitimate

interests of other nations or the global commons. States have a duty to prevent environmental harm, even when it is not within their national borders.

This is closely associated with the duty imposed on all states "to safeguard the rights of other states within their territory, particularly their right to integrity and inviolability in times of peace and war."

In the ***1949 Corfu Channel Case***, the International Court of Justice reiterated this principle of State responsibility by stating that "every State's obligation not to allow its territory to be used for acts contrary to the rights of other States" was one of the "general and well-recognized principles" of international law. States must bear responsibility for damages resulting from transboundary contamination as a natural corollary of this legal mandate.

The Trail Smelter arbitration highlighted the need of taking preventive action in order to deal with the matter of transboundary environmental damage, in addition to the concepts of neighbourliness and the need to exercise reasonable care. As the Tribunal issued its ruling, the smelter to desist from causing additional harm and by instituting an emission control system highlighted the necessity of taking preventative action to avert hazardous operations.

2. Duty to Care: Legal Jurisprudence Enables Procedural Innovations

Over time, the legal foundation established in the Trail Smelter arbitration ruling has gained both international and juristic recognition. Australia and the Nuclear Tests case claimed that conducting additional atmospheric nuclear tests (by France) would be illegal "insofar as it involves the modification of the physical conditions of and over Australian territory [and] pollution of the atmosphere and of the resources of the seas" and that doing so would be in violation of all applicable international legal norms.

This was highlighted by Judge de Castro in his forceful dissent, who said: “If it is generally accepted that one has the right to request that adjacent properties refrain from emitting certain toxic vapours, it follows naturally that the applicant has the right to request that the Court support its argument that France should stop allowing radioactive fallout to accumulate on its soil. Additionally, the Lake Lanoux arbitration award aided in the formation of a significant procedural regulation of state authority.”

3. Good Faith Requirement: The Impact of Soft Law

One of the most important articles in the 1972 Stockholm Declaration on the Human Environment is Article 21 concise explanations of the obligation to recognise and protect the interests and rights of others governments in modern times. In line with the UN Charter and

the fundamentals of international law, states are entitled to the sovereign right to utilise their own natural resources in accordance with their personal environmental guidelines.

In essence, the advancements in the field of international law at the time were progressively codified in the Stockholm Declaration. Notably, the General Assembly itself instructed the Conference to "respectfully the exercise of permanent sovereignty over natural resources, as well as the right of each country to exploit its own resources in accordance with its own priorities and needs and in such a manner as to avoid producing harmful effects on other countries" just prior to the Stockholm Conference.

It is now widely acknowledged that, in order to safeguard the interests and needs of other states and keep them safe from negative effects while pursuing justifiable development objectives, due diligence is required. Many regional and multilateral accords addressing various issues facing the global community have found resonance in this fundamental premise. Examples of pertinent agreements that emphasise states' obligations to prevent negative effects from happening in regions outside of their national borders are the 1963 Nuclear Test Ban Treaty, the 1968 African Conservation Convention, the 1972 World Heritage Convention, the 1951 International Plant Protection Convention, etc.

4. Environmental Damage Liability: Transitioning from a Flexible Standard to a Strict Law?

It was then included, in the same exact words, in the preambular paragraphs in accordance with Article 3 of the Convention on Biological Diversity, the Vienna Convention for the Protection of the Ozone Layer in 1985, the 1979 Convention on Long-range Transboundary Air Pollution, and the 1992 United Nations Framework Convention on Climate Change. States have an obligation to safeguard and maintain the aquatic ecosystem, as specified by the 1982's United Nations Convention on the Law of the Sea. The Convention places an affirmative duty on states to shield citizens by preventing harm natural resources, even as it supports states' sovereign right to abide by national environmental rules while using their natural resources.

More recently, in 1996, the ICJ emphasised the need of protecting the human environment and declared in its consultation paper on the legality of threatening or using nuclear weapons- "The environment is not an abstraction; rather, it is a symbol of the place where people live, their standard of living, and their overall health—including that of future generations. The body of international law pertaining to the environment currently includes the general duty of States to guarantee that actions within their jurisdiction and control respect the environment of other States or of places beyond the national control."

These advances have gone beyond the boundaries established in the Trail Smelter arbitration, extending The cross-border extent of the duty to encompass areas outside the borders of national authority.

The Permanent Court of International Justice emphasised the significance of this notion in the ***Chorzow Factory Case***, declaring that "it is a principle of international law, and even greater understanding of law, that every breach of an agreement implies a responsibility to make amends."

THE IDEA OF GLOBAL RESPONSIBILITY

The notion of state accountability refers to the legal responsibilities that a state may have for transnational crimes. Discussions regarding non-wrongful liability have taken place i.e., the issue of states' accountability for negative effects as a result of behaviours that are not forbidden by international law. In essence, the purpose of this theoretical framework was in order to deal with the responsibility for transboundary environmental effects. For a while now, it has been a topic of great interest to legal scholars worldwide. The following are the key inquiries in this regard: Does an obligation resulting from transboundary environmental harm surpass the requirements of due diligence? Which liability standard—flaw-based, strict, or absolute—applies to transboundary environmental injury under international law? Is it feasible to transfer responsibility to expresses clearly? How do non-state actors fit into the framework of environmental accountability, and how does international law address this growing significance of these entities?

There appears to be a close relationship between the ideas of state accountability and international liability. As a result, the phrases "responsibility" and "liability" have multiple meanings in both treaties and legal precedent. "Responsibility" is a term that states' obligations, while "liability" denoted the repercussions of a state's violation of those obligations. The aforementioned view was favoured through the Law of the Sea Convention, United Nations. However, although while responsibility distinguishes a state's obligation under public international law, many liability treaties pertaining to liability is used in nuclear harm and oil pollution to refer to responsibilities within private law.

In its investigations, the International Law Commission has given "extended parallel meanings to both terms," interpreting state accountability and international liability significantly differently. The commission's choice to divide the matter into two distinct subjects has drawn criticism. These subjects are now categorised under two headings:

I. state accountability for transnational crimes, including both principal and auxiliary responsibilities;
II. worldwide responsibility for harmful outcomes or actions that do not violate international law.

PREVENTING CROSS-BORDER DAMAGE

The draft articles on this topic address a state's preventive responsibilities for possibly adverse outcomes of hazardous activities that are not inherently forbidden as per worldwide law. The goal of the Articles is to make clear the boundaries and areas in which the normative principles can be applied. They include any undertaking that carries a physical risk of causing considerable cross-border harm. Furthermore, the activities need to occur within the source state's borders, under its authority, or within its jurisdiction. The possibility of serious cross-border injury needs to be quantified by a definite direct physical impact. There must be an obvious link between the action in question and any harm or injuries sustained.

Furthermore, it must be demonstrated that the harm resulted from the bodily fallout from these kinds of actions. The risk involved does not have to be "serious" or "appreciable," but it must be more than "detectable" or "substantial." The Committee decided to use the phrase "significant" to describe a situation in which damage could give rise to liability claims, provided that the damage has actual negative effects on things like industry, property, agriculture in other states, the environment, or human health that can be quantified using factual and objective standards.

The fundamental responsibilities of a state with regard to prevention are outlined in Articles 3 and 4. States are primarily responsible for preventing major transboundary harm by using all available tools, as stated in **Article 3.** In any event, they must make every effort to reduce the risk involved. may comprise judicial, executive, and legislative actions in this context that are intended to support well-informed decision-making. It appears that in order to apply the due diligence responsibility, national laws must be adopted and put into effect, incorporating recognised international norms. A state's need to exercise due diligence may be reflected in laws passed, rules made by the administration, and procedures used for enforcement.

The necessity of international cooperation in putting into practice efficient policies for the avoidance of major transboundary harm is emphasised in **Article 4**. Further articles outline specifics of this kind of cooperation.

To attain a fair and balanced distribution of interests, **Article 10** offers recommendations to states on how to conduct consultations regarding situations originating from potentially harmful actions. Weighing all the situations and elements is necessary to get such an outcome against the backdrop of all the known facts. The Convention's **Article 6** concerning the Law of International Watercourses' Non-Navigable Uses appears to have been the source of its adaptation. The parties are essentially guided to weigh the pros and cons of several actions that they could decide to utilise depending on certain unique situations by the non-exhaustive list of elements and conditions.

The remarkable list of additional responsibilities included within the Proposed Articles on the Avoidance of Cross-border Damage from Dangerous Activities information sharing between states and protocols to be adhered to in the case that a state of origin fails to notify. Concerned parties must provide the public with pertinent information, victims of transboundary injury must have access to non-discriminatory justice, emergency response plans must be developed, etc. The method used in the Draft Articles implies that the focus should be placed more on the procedural responsibility of prevention than on the duty to make repairs, provide a remedy, or pay compensation.

INTERNATIONAL LAW'S CIVIL LIABILITY REGIMES: A REVIEW

Growing awareness of the transboundary environmental harm resulting from an occurred at the interstate level throughout the second throughout the first half of the 20th century a variety of human activities, such as oil pollution, emissions from industrial sites, land-based marine pollution, research on nuclear energy, worldwide shipping of extremely dangerous materials, etc. In various situations, international law has been called upon to handle the escalating issues spreading environmental contamination across borders and other concerns related to long-term growth.

One may consider the new obstacles to environmental protection when analysing the swift growth of the reach of worldwide environmental treaty law. As knowledge of the effects of surroundings deterioration increased, severe was the resentment towards the conventional notion of state accountability as a template for enforcing global environmental preservation norms. Ideas for developing worldwide environmental protection regimes and the oversight of these regimes by international institutions emerged as a result of the quest for new solutions.

Therefore, it was hoped that the issue of transboundary harm would be resolved by creating suitable legal guidelines and processes controlling accountability and remedies for transboundary environmental damage. Redress and culpability for transboundary harm are

covered by a small number of multilateral treaties. These agreements that address responsibility and remedy issues can be roughly divided into three groups.

i) A number of multilateral treaties specify civil responsibility in order to deal with the matter of operators' and, in certain cases, States', liability.

ii) Certain treaties impose direct liability on the States.

iii) The issue of liability and remedy is frequently mentioned in broad terms in international treaties, but the procedural specifics are typically left out.

THE REGIME FOR NUCLEAR LIABILITY

Ensuring "adequate and equitable compensation for persons who suffer damage caused by nuclear incidents while taking the necessary steps to ensure that the development of the nuclear liability regimes" is the primary goal list civil responsibility laws pertaining to nuclear harm. This does not impede the advancement of nuclear energy and its use for peaceful reasons. The objective is to achieve a careful equilibrium between the industry's existence and the requirements of accident victims for compensation in order to establish nuclear energy as a viable alternative and encourage financial commitment to the nuclear industry.

Three interrelated accords constitute the bulk of the existing international legal system: the Vienna Convention on Civil Nuclear Energy Liability and the Paris Convention on Third Party Liability in the Nuclear Energy Sector, and Damage and the Convention Governing Maritime Nuclear Liability Material Carriage The Brussels Additional Convention on Third-Party Liability in the Nuclear Energy Sector was ratified in 1963, adding to the Convention in Paris. Extra procedures were enacted in 1964; 1982; 2004 to further update it. In 1988, the Vienna Convention and the Paris Convention were combined by the Joint Protocol Relating to the Application of the Vienna Convention. The Vienna Convention on Civil Accountability for Radioactive Damage was updated in 1997 by the Vienna Convention on Civil Liability for Nuclear Damage and the Vienna Convention on Supplementary Compensation for Nuclear Harm Amendment Protocols. Both the Supplementary Convention and the Amending Protocol are not there yet in effect. The first worldwide legal document addressing civic responsibility for nuclear harm was the Paris Convention, which was intended to address nuclear incidents within Western Europe. It creates a system of strict liability for nuclear damage, doing away with the requirement that culpability be established prior to wrongdoing.

AN ACT RELATING TO OIL POLLUTION LIABILITY

The idea that "States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment" and that they "shall be

liable in accordance with international law" is a well-established one in general international law. According to this legal stance, the coastal states are accountable for the actions that they allow to occur within their borders or under their authority. It appears that the flag states have explicit obligations for their vessels. Major petroleum products are typically traded internationally via huge oil tankers travelling across oceans. The loss of ships like the Exxon Valdez, the Amoco Cadiz, and the Torrey Canyon made clear to the world community the potentially disastrous effects of such maritime mishaps on local ecosystem, wildlife, fisheries, and coastal communities. Under these regrettable circumstances, the right of the coastline state to take action if a threat of oil contamination and the issue of culpability drew significant worldwide attention for oil pollution.

The international community responded by gradually creating a legislative framework that addressed every issue pertaining to ship-related oil pollution. The International Convention on Civil Liability for Oil Pollution Damage of 1969, the 1971 International Convention on establishing an international fund to compensate for oil pollution and signing the 1977 Convention on Civil Liability for Damages to Oil Pollution Resulting from Seabed Mineral Resource Exploration and Utilisation comprise the main components of the oil pollution liability and redress regime, along with their numerous Protocols. Numerous changes have been made to these Conventions, which were signed under the International Maritime Organization's auspices, to reinforce the clauses pertaining to jurisdiction and liability. It also addressed the perceived need for enhanced requirements for compensation.

The Conference, which imposes stringent but restricted responsibility in the event of pollution damage, on the ship owner's part caused by oil spilled from a seagoing vessel that is really transporting bulk oil used as a cargo. Liability of the owner for a specific incidence is dependent upon and constrained by the ship's tonnage. Under the Convention, the proprietor of a tanker carrying more than two thousand tonnes of heavy crude oil is obligated by law to maintain financial stability, such as insurance, to cover his liabilities. Additionally, there is a time limit on the liability: claims for damages must be filed no later than three years after the incident. There are very few exemptions allowed by the regime. If the owner can demonstrate, among other things, that the damage resulted from specific circumstances stated in Article III, like a conflict, hostilities, etc., or if the harm was only the consequence of a third party's wilful conduct or negligence, then the owner is released from liability.

CONCLUSION

By analysing the concepts regarding national accountability and global culpability as they emerge from many origins, the article examined and clarified the legal requirements around the environment of nations. international agreements, customary international law, state treaty practices, court rulings, and professional judgements, such as the International Law Commission's work. The brief synopsis of multilateral responsibility frameworks pertaining to space exploration, oil pollution damage from ships, and nuclear operations aimed to identify the key components and capture the main themes of concerns about their practical efficacy.

Although the pace and scope of the growth of legal norms in this area still leave much to be desired, Environmental liability law is still a relatively new area of law. The foundational ideas of international law serve as the inspiration and legal basis for the concept of environmental duties. It is common knowledge that states are accountable when they violate an international obligation. It might be difficult to define a state's international and environmental commitments. The most new ILC Draft Articles regarding Transboundary Harm Preventive measures as well as the proposed guidelines for allocating losses when transboundary harm occurs demonstrate how the law pertaining to States' environmental commitments is being more developed.

It is now abundantly evident that governments have a duty to work with one another in times of emergency in order to prevent and minimise serious transboundary harm. The international norms governing state accountability and responsibility must be viewed as motivating factors for states to meet their duties in terms of prevention, restoration, and compensation. According to an analysis of international legal treaties, these instruments establish a civil responsibility structure. Only one of them imposes original State culpability, with the exception of a couple that impose secondary State obligation. It appears that the States have been hesitant to create international regulations imposing severe accountability for transboundary injuries resulting from otherwise legal actions.

It seems that liability is typically associated with engaging in a risky activity and is attributed to the organisation carrying out the activity. The earlier agreements, including the nuclear damage and oil pollution treaties, exclusively considered harm when defining damage to a person or piece of property. Recent changes to these regimes demonstrate that they are becoming more cognizant of environmental factors as well.

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