

International Environmental Law/Multilateral Treaty Negotiation
Fall Semester 2007
Lecture #8

Negotiating International Rules on Liability and Redress under Cartagena Protocol

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Negotiating International Rules on Liability and Redress under Cartagena Protocol

- Know the mandate and retain/expand it!
 - Protocol Art.27 & Decision BS-I/8: ToR: “elaborate options for elements”, “complete its work by 2007”.
- Understand the Cartagena Protocol (2000)
 - Art.1 “objective”: precautionary approach; LMOs “that may have adverse effects”; “specifically focusing on transboundary movements”; “effects on the c-s-u-b, taking also into account risks to human health”.
 - Art.4 “scope”: TM, transit, handling and use of LMOs
 - Arts.5, 6: exceptions and limitations.
 - Art.8-10, 15 (AIA for intentional introduction)
 - Art. 11 (“Softer” procedure for FFP)
 - Art. 17 (unintentional movements)
 - Art. 18 (requirements for handling etc.)
 - Art. 25 (illegal transboundary movements)

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➤ Know the “Rules of the Game (RoP)”:

- Protocol Art. 29 (5)→CBD Art.23 (3) “consensus”→Decision BS-I/1.
- RoP: Rule 26 “subsidiary bodies”
 - Rule 2: Definition of subsidiary bodies
 - Rule 26 (5): *mutatis mutandis* application of MOP RoP
 - Rule 40 decision-making: blocked→consensus
 - Rule 26 (5) (b): right of vote of chairperson
 - Rule 26 (5) (c): simple majority voting (!)
 - Rule 41: “present and voting”

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➤ Know the History of Negotiation:

• Follow the “Reports of the WG:”

- First: UNEP/CBD/BS/COP-MOP/2/11 (2005)
- Second: UNEP/CBD/COP-MOP/3/10 (2006)
- Third: UNEP/CBD/BS/WG-L&R/3/3 (2007)
- Fourth: UNEP/CBD/BS/WG-L&R/4/3 (2007).

➤ Know the Positions of Delegations (submissions):

- WG-L&R/1/INF/1&Add.1 (2005): EU, Madagascar, Norway, USA, Australia.
- WG-L&R/2/INF/1&2 (2006): Argentina, Canada, Ethiopia, EC, Indonesia, Madagascar, NZ, Norway, Sri Lanka, USA.
- WG-L&R/3/INF/1 (2007): Argentina, Colombia, Ethiopia, EC, Norway, Thailand.
- WG-L&R/4/INF/1 (2007): Australia, Canada, EU, Japan, Norway.

• All available from CBD Homepage

<http://www.cbd.int/biosafety/issues/liability.shtml>

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➤ Examination of “Our” Negotiating Documents (Issues):

- Add.2: Options for Overall Framework
 - What are we establishing? Civil liability; Administrative regulations; private international law; domestic law; compensation scheme
 - What is the legal nature? Legally binding or not; international or national law; harmonization or guidance.
 - Add.1 relevant part (VI-B, C & E; VIII)
- Add.1: Elements of the Liability Regime
 - Scope: (a) activities covered (II-A); (b) geographical scope where the damage occurs (II-B).
 - Definition of damage (III-A&B).
 - Channeling: who will be liable (IV-A-1&B-1).
 - Nature of liability: administrative; fault/strict liability (*ibid*+IV-Abis/Bbis-1, 4(b) & 5).
 - Supplementary compensation/capacity building schemes (V-A&B, VII).

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➤ Special Rules of Mock Multilateral Treaty Negotiation:

- Negotiation on only those identified (p.5) issues.
- Emphasis on legal (not political) arguments: evaluation based on how you construct legal arguments in order to achieve a position. Submission of position papers and drafts evaluated high.
- Instructions:
 - Some research requirements by delegations.
 - Proposal for instructions from delegations.
 - Time limits for request for change of instructions.
- Chairperson: strong initiative: urges taking positions or making statements.
- General statement with working papers (Jan.21)
- Use of contact groups for between the classes negotiation.

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