

ISAAA-IFPRI/PBS-PRRI Asian Regional Workshop on
Sustainable Agriculture, Biotechnology and Biosafety

10-11 January 2012, Bangkok, Thailand

Liability and Redress

Piet van der Meer

Topics

- Key concepts and distinctions
 - Liability vs criminal sanctions
 - Traditional damage vs damage to public goods
 - Civil system vs administrative system
 - Strict vs fault based liability
- Article 27 of the Cartagena Protocol on Biosafety

Key concepts and distinctions

Liability vs criminal sanctions

- Liability: compensation and/or remediation of damage, also when no laws are violated.
- Criminal sanctions: punishment for violation of law, also in case no damage occurs
 - Criminal intent (i.e. not administrative errors)
 - proportionality of sanctions (fines and/or imprisonment)

Key concepts and distinctions

Liability: Civil system vs administrative system

- Civil system for liability and redress
 - Injured persons bring claims to courts
- Administrative system for liability and redress
 - Government empowered to determine damage and order response measures

Key concepts and distinctions

Liability: traditional damage vs damage to public goods

- Traditional damage: a person's property, health or economic interest.
- Damage to public goods: e.g. the environment.

Key concepts and distinctions

Strict vs fault based liability

- Strict liability
 - An operator is liable for damages, regardless of whether that person or organisation is at fault.
E.g: damages resulting from ultra-hazardous activities.
- Fault based liability
 - An operator is only liable for damages when he was at fault (e.g: negligent).

Key concepts and distinctions

Article 27 Cartagena Protocol - Liability And Redress

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.

Key concepts and distinctions

Article 27 Cartagena Protocol - Key elements

- the meeting of the Parties shall adopt a process
- with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress
- for damage resulting from transboundary movements of living modified organisms,
- analysing and taking due account of the ongoing processes in international law on these matters,
- and shall endeavour to complete this process within four years.

>> Result: The Nagoya-Kuala Lumpur *Supplementary* Protocol on Liability