Present tendencies in international liability regime

A. Introduction

Damage occurs everywhere and to everybody in modern life. If this happens, the question arises **who** should cover those damages. This situation occurs under purely **domestic circumstances**, this situation also occurs in circumstances involving a **transboundary** element. This report should present some **basic conceptions** governing this issue and give an outline of the major problems incurred in application of such regimes without bothering you with all the details.

B. Responsibility regime

The legal order has answered this question in different ways: In a more general perspective, the solution has be found in the duty of reparation as a consequence of **responsibility**. This regime entails the following **elements**:

- a damage,
- a breach of a legal duty,
- a person or subject to which the act is attributable,
- a causality, and
- sometimes a certain degree of fault.

This system is – with certain variations - common to domestic as well as to the international legal order. We must even acknowledge that the international legal order **borrowed** a substantial part of it ideas from the various domestic system.

Only recently, more precisely in 2001 after more than 40 years of work, the **ILC** submitted draft articles on **State responsibility for internationally wrongful acts** to the GA and the GA took note of this articles. Whether or not these articles will be converted one day into a convention is still to be discussed in time. Although these articles contain some progressive elements, they were nevertheless generally welcomed by the State community so that it can be expected with a certain degree of probability that State practice will widely follow them.

In accordance with these articles, the **constitutive elements** of responsibility are the **attributibility** of the act and the **breach of an obligation** under international law. Without saying so, a **causality** must also exist in order to create responsibility. It could be omitted in this context whether a **damage** is necessary to trigger off responsibility; different views have

been expressed in this regard. The articles consider the **unlawfulness** of the act as constituting already injury and damage. But, in any case, there must exist **somebody** to which the relevant acts are attributable so that this entity can be identified as being obliged to make good the wrongful act and to wipe out its consequences. If no entity can be identified no coverage of the damage can be achieved through this regime.

These articles, which are only of a **secondary nature**, do not express any view on the need of **fault** since this element was thought to belong to the substantive norms, i e the primary norms. But this conception made it necessary to provide a series of **exceptions** or circumstances precluding wrongfulness, such as

- consent,
- compliance with a peremptory norm,
- self-defense,
- counter-measures,
- distress,
- necessity and
- force majeure.

If this circumstances exist, again no coverage of the damage could be achieved since there is no wrongful act. And the duty to repair damages exist under this system only and exclusively if a wrongful acts was committed.

C. Liablity regime

This description of the system of State responsibility ascertains also the limits of this regime: **No reparation** can be achieved because

- either **nobody** can be singled out as being the author of the relevant act generating the damage or
- some entity can be identified and causality can be established, but the **wrongfulness is excluded** by the circumstances.

In such cases **no reparation** for the damage can be achieved through the regime of State responsibility.

The different national legal orders as well as the international legal order have already **reflected this gap** and tried to find solutions in order to fill this gap. This became necessary

in particular in view of increased used of substances or performance of activities which entail a **high risk** of substantial damage.

Certainly, the best would be to **rule out** any such activity of use of any of such substances and to declare it as unlawful. If damage occurs, the wrongfulness would automatically entail responsibility for a wrongful act. However, society **needs such activities** so that some other way had to be found to ensure compensation for damage which despite all precautionary measures could occur.

The definition of the **amount of precautionary** or preventive measures is dictated in particular by **economic considerations**: The individual operators will try to measure the **cost of preventive measures** against the **risk**, understood as an aggregate of the amount of damage and the foreseeable frequency of its occurrence. It seems that one can distinguish the following situations as the result of the relation between risk avoidance costs and costs of risks (damages) and benefits resulting from the activities:

- The situation where the **risk avoidance costs** are **less** than the risk costs (or possible damages) without such measures; if in such a situation damage occurs without preventive measures so that the situation of unlawfulness exists the responsibility system applies insofar as the damage was caused because of the absence of preventive measures.

- The situation where the risk expressed as **costs and the risk avoidance costs** are so high in **relation** to the benefit to be expected that nobody would be likely to incur the duty of compensation so that it would be better to **prohibit** the activities; risk avoidance costs can only be reflected in a total prohibition of such activities

- Finally, there are situations where the **risk avoidance costs** are **not** as high as to require a prohibition but so high in relation to the costs of the **risk** that the **community** should be rather exposed to that risk than the operator be obliged to take preventive measures because. This is the **rest risk** which the community is exposed to. In such a situation, which cannot be remedied by a responsibility regime, it is nevertheless necessary to provide for a coverage of the damage as far as possible,.

This has been achieved by a **legal regime** which is found under different designations: They reach from **liability for risk** to **absolute**, **objective** liability or responsibility or only **liability**. In common law this regime was developed in accordance with the decision Ryland v Fletcher, and after a very careful examination the Secretariat of the UN came to the conclusion that the principles derived from this case are common to most domestic legal orders.

I. The main elements

The features of such a system are the following:

1. The activities and substances falling under this regime are **clearly defined**; the decision to include one or the other activity or substance depends on the necessity of this substance/activity for the development of the society, the inherent risks of such substance /activity and the tolerable level of the risk.
2. The **damage covered** by this regime is defined
3. The subjects who have to assume liability are **not necessarily identical** with the author of the damage; there is a **channelling** of this obligation towards the person which draws the benefit from it or which exercises the control.
4. The **amount of compensation** is clearly defined and mostly **limited**.
5. The victim needs **not prove the fault** and/or wrongfulness on the side of the author.
6. The obligation of reparation is subject to very **limited exceptions**.

It may be asked whether this system is **complementary** to that of responsibility based on fault insofar as it is applicable only if the latter is not applicable or whether it is a system which first is applicable in any case so that the system of responsibility would be only of subsidiary nature. In any case, this system simplifies the issue in the interest of the victim for which it becomes easier to obtain compensation for the damage suffered.

These problems did not escape the attention of **international community**, in particular as activities have been concerned which have entailed an international aspect, such as in the case of **transboundary damage** or in the case that the activity or substance entails an international aspect. This issue has been addressed essentially in the context of the protection of the environment when as early as **1972** the Declaration on Human Enviroment refers to the need to elaborate rules regarding liability. When the **ILC** elaborated its draft articles on State responsibility it already noticed the **need to cover such situation** insofar as it included an article stating that the existence of circumstances precluding wrongfulness would not affect the question of compensation for any material loss caused by the act in question (Art 27). Accordingly, it placed the item of liability for not illicit acts on its agenda. The problem with this issue was, however, that it was treated over a certain time in a way which did not correspond to the existing international practice. Nevertheless, the first result of this work was a set of draft articles on "**Prevention of transboundary harm from hazardous activities**" which were submitted to the 6th Committee of the General Assembly in 2001.

As to **liability *stricto sensu*** the reaction in the ILC was divided: views had been expressed in the ILC which did not consider the issue of liability appropriate for a work in this body: So as Member of the ILC Simma reports, some members felt that the Commission lacked the necessary **know-how** to consider some of the topics inherent in the study of liability. For example, topics such as **insurance would require a financial knowledge** not possessed by most outside of that field. In addition, some members felt that the topic of liability involved **negotiations between States** and therefore would not be appropriate for codification by the Commission. However, the **prevailing view** was that the Commission could make a valuable contribution in the area of loss allocation, and that in light of the fact that the topic was recommended for study by the General Assembly and the Sixth Commission[1], liability should be considered. At a minimum, the Commission's work on the topic could serve as a preparatory effort for guidelines for State negotiation and a basis for further discussion in the Sixth Committee. It was agreed that, if necessary, expertise from other fields could be sought and consultation with States could be held. Be it as it may be, the ILC embarked this year on this issue, established a working group which focussed on the issue of the scope and the involvement of the operator and the State. It seems that quite a substantial part of the discussion was influenced by a most valuable work of the Secretariat on this question of liability which performed a detailed survey of the existing state practice in this field.

Irrespective from this discussion, the international practice has already since quite a time developed certain **liability regimes**: This practice established regimes of **civil liability**. Such regimes have first been elaborated for **maritime activities**, but later extended also to other activities such as **nuclear activities** and, more or less finally, to a very broad range of activities as envisaged by the **Lugano Convention** of the Council of Europe.

That means that **international treaties** have been concluded which

- define the **activities** covered by it,
- define the **damage covered**,
- provide an **obligation to compensate** for such damages,
- impose this obligation on – mostly – the **operators**
- define the **amount of compensation**

[1] See General Assembly resolution 3071 (XXVIII) of 30 November 1973, requesting addition of the topic to the Commission's Working Programme; resolution 3315 (XXIX) of 14 December 1974, sect. I, para. 4 (a); resolution 3495 (XXX) of 15 December 1975, para. 4 (b); resolution 31/97 of 15 December 1976; operative paragraph 3 of General Assembly resolution 56/82.

- provide very **narrow exceptions**
- provide a certain **system of coverage**.

1. Activities

It must be acknowledged that, as yet, there does not exist a rule of general international law which extends the scope of the regime of liability to all possible activities. It only applies to clearly **defined activities** or substances which, admittedly, can be defined in a narrower or broader manner. As to the definition of activities, the regimes started with very specific activities in the field of **maritime transport**. Such regimes have a very long tradition going back to ancient times. But it is not yet clear whether State community is **already prepared** to accept a very broad range activities as falling under this regime since it necessarily would burden all such activities with additional costs. The acceptability of the **Lugano Convention** for the European States will give a better picture of the present situation at least in the **regional** level. Whether a **general applicability** of such a regime can be achieved will be revealed by the current work of the **ILC** which in this year's session started its discussion by applying the future regime of liability generally to "activities not prohibited by international law".

2. Damage

As to the damage covered by such regimes we face a certain evolution which tends towards **increasing** the recoverable damage: formerly only the **damage suffered** was covered – either personal damage, loss of life or other personal injuries, or damage in the property rights – in more recent regimes also **other costs** are recovered: such as those which are incurred by the necessity to take **precautionary measures**. This conception corresponded to a solely **anthropocentric approach** where damage was recoverable only if suffered directly by individuals. As to the **precautionary measures** the question arises up to which amount such measures should be covered, in particular by the **other State** if this question arises in a transboundary context: the texts usually measures such measures by their **reasonableness**, i e insofar as they are necessary to provide the necessary protection against reasonably foreseeable damages. In particular, this issue is one of the core issues of the recent draft articles of the **ILC on prevention** to which we will come back a little later. The increased **threats to the environment**, however, required an **extension** of the meaning of damage insofar as damage to the environment itself was included. This extension raised the question of the **definition** of the environment – and we have to acknowledge that there does not exist a

commonly agreed definition. So for instance the Council of Europe's Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano Convention) includes into the meaning of „environment":

> "--natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors;
>
> --property which forms part of the cultural heritage; and
>
> --the characteristic aspects of the landscape."

This very broad definition was further broadened by the definition of damage to it which refers to "changes in the physical environment or biota, including changes in climate, which have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind".

Such a broad concept could perhaps be acceptable within a certain region such as Europe it is however questionable whether it would be achievable on the universal level. The draft articles of the ILC on Prevention uses only a very short definition of "Harm": harm caused to persons, property or the environment.

3. Obligation of compensation and its limitation

The main issue of this system consists in the **primary duty of compensation**. There is usually no duty of restitution, but only of compensation. Its nature as **primary** duty excludes the application of the mechanism of counter-measures in the original sense, the effect of which is to ensure the compliance with the secondary rules of responsibility.

The **justification** for the duty of compensation can be derived from different considerations: One is that the person or entity performing such dangerous activities draws benefits from it so that it should also bear the costs generated by it. This consideration comes in the close vicinity of the **polluter pays principle** according to which the operator should internalise all costs generated by the production into the costs of production. If this is not done the operator would externalise its costs and obtain an enrichment at the costs of the community. Whether or not this principle already has gained the status of a **legal principle** or still remains an economic one is still to be discussed. In any case, it has been included in certain larger systems such as the EU so that in some regard it already has acquired a certain legal status. A further recognition of this principle is to be found in Principle 16 of the Rio Declaration.

The **amount of the compensation** is subject of a long lasting discussion: A basic feature of almost all liability regimes is the **limitation of compensation**. A reason for it is that it does

provide the victim with a reasonable coverage of its damage without putting the activity itself in jeopardy and discouraging its further development. The general rule has always been that a compensation is possible only that far as the operator is **able to insure** these activities. Otherwise, the community or third party would nothing gain since it could very easily occur that the operator becomes insolvent so that no compensation would be achieved and the activity will be terminated irrespective of its value for society. This relation of **insurability** and compensation is indeed not a new one since long it has raised concerns in the field of maritime transportation: There, it became quite clear that as soon as the compensation rate or – in different terms – the amount of liability has been raised the transportation costs will also be raised. Although it seems that today there exist a certain tendency towards **unlimited liability** such as in the context of the Warsaw Convention the main systems still rely on the principle of limited liability. Hence, this limitation has to respect the limits of the insurability of the activity. Any compensation duty exceeding beyond this limit would undoubtedly endanger the further performance of the industrial activity. This limitation also depend on the system of compensation and it cannot be excluded that different systems – to which we will return a little later – entail different compensation ceilings.

The limitation has already been **criticised** as it was said to be in conflict with the PPP, would diminish the pressure upon the operators to exercise more diligence in their activities and would allow the operator to externalise certain costs to the public.

Of course, it has to be taken into account that the relation between a **liability system** and a **responsibility** regime can be understood in two different ways: on the one side, as complementary to the responsibility system, on the other, as replacing it. The general rule is that there does not exist a limitation to the compensation due under the responsibility regime. For this reason, some system which provide for a double regulation, a liability regime and a separate responsibility regime, limit the compensation under the former, but not under the latter. There are, however, even others, which introduce a limitation for the compensation under the responsibility regime. A different practice is difficult to apply in systems which do not distinguish between both, but only apply a liability regime. One could argue in such case that the liability system with limited compensation coverage apply in any case, but that as soon as wrongfulness can be established the unlimited duty of compensation under the reparation regime applies.

4. The channelling of the compensation duty

The existing systems provide a channelling of the duty to compensate insofar as they regularly impose this duty on the operator. This is justified by various **reasons**,

- so for instance because it is the operator who usually has control over the activity,
- or because it is the operator who is the person or entity which can be reached by the victim the easiest.

5. The exceptions

A characteristic feature of the liability regime consists in the **restricted exceptions** to it. In legally dogmatic terms, these exception cannot be compared to the circumstances precluding wrongfulness since there does not exist any such wrongfulness or – at least – it does not form a constituent element of the compensation duty. Nevertheless, they are relatively similar to them as to their content although they are more restricted. This restriction is necessary since it is one of the main objectives of the liability regime to apply in particular in situations where the responsibility regime cannot apply such as in case of force majeure. The amount of the exception is called to establish a **certain balance** between the needs of the victims and the necessity to maintain the relevant activity.

These exceptions are of **different kind**:

- One category consists of situations like war, hostilities, civil war or natural catastrophes;
- the second relates to premeditated contributive acts of third parties;
- the third category relates to authoritative acts of the States which makes it impossible to avoid the damage. In such a case, it is the State which has then to assume responsibility for its own acts.

7. System of coverage

The **core issue** of any regime of liability consists in the **system of coverage** of the losses suffered. This system poses a particular problem since – in particular in the case of **ultra-hazardous** activities - the cost of compensation usually exceeds the capacity of the companies. Already relatively early, first of all in the field of maritime transportation, the relevant international treaties provide a system consisting of **different tiers**:

- First, the **relevant operator** can be seized. For this reason, the system usually oblige the company to obtain a sufficient insurance or to provide another sufficient financial guarantee before the authorization for such activities is granted. Already this insurance permits the distribution of costs among a larger group of participants so that the coverage can be higher.

- In the second tier, **a pool** established by all those companies which carry out similar activities can be used for compensation. This system again aims at redistributing the costs of such activities among a larger collectivity in order to achieve a better coverage. The first appearance of such system in international treaties can be traced back to a convention of 1971 and have been found expression even in systems like CRISTAL and TOVALOP. So far, the State is not engaged, its only duty consists in ensuring that the conditions for assurance, guarantees or the establishment of a pool are met.

- In more recent times, a third tier has been introduced, which already involves the **State** insofar as the State becomes liable for the compensation of the damages that cannot be covered otherwise. Here, it is in particular the extraordinary amount of damage which calls for a direct engagement of the financial capacity of the State. This involvement is also justified for the reason that the States are mostly closely connected with the relevant activity. However, it seems that in the time of a increased withdrawal of the State from economic activities this involvement is not longer the preferred one. Nevertheless, The recent discussions in the ILC emphasised the role of the State in this regard: There, it was agreed that cases might arise when private liability might prove insufficient for attaining equitable allocation. In such cases, a discussion arose as to whether the remainder of the loss should in such cases generally be allocated to the State or whether any residual State liability should arise only in exceptional circumstances. However, it was acknowledged that certain difficulties could arise if the State of origin, the State authorizing the activity, the State controlling it and the State benefiting from such activity were **not identical**. This discussion only confirms that the question of the involvement of the State in the compensation regime is still far from being generally settled.

Of course, it is quite true that there exists one regime where the State is directly involved, namely the **Convention for the liability for damages caused by Space objects** of 1972. This convention is said to establish a clear State liability since the launching State can directly

be seized. However, this system can only be explained by its particular nature, the immense engagement of the State in such activities as well as the political environment existing at the time of its elaboration. For these reasons, this system is inappropriate to be applied under existing situations.

8. Procedural questions

Any regime of liability contains two elements, the material and the procedural one. One must recognize that only the material side of this coin cannot establish a workable regime which could cope with this complex issue. The procedural side is, however, even more complicated insofar as the regime addresses transboundary damages since in such case **transboundary communications** entailing legal effects are needed.

a. Evidence

A particular problem in particular in the field of environmental damages is that of the **proof of causality**. In this regard it is often extremely difficult if not totally excluded to establish the immediate author of the damage beyond any reasonable doubt in a manner which is normally required by the legal order. In order to overcome this difficulty, legal practice has therefore developed a mechanism which alleviates the position of the victims: It proceeds from the assumption of certain **stochastic damages**, i e damages which are typical for certain activities. If such damages occur the **burden of proof is shifted** from the victim to the alleged author, accompanied by a change of the subject-matter of proof. No longer the **positive causality** is to be proved but the **negative** insofar as the alleged author has to produce evidence that its activity are not the cause of the damage. However, this shift of burden of proof is **not generally recognized** by the international regimes; even the Lugano Convention only states in its Article 10 that the judge has to take into account the risk entailed by the dangerous activity. According to the commentary drawn up by the Secretariat this provision did not entail a clear cut shift of burden of proof. A clear reversal of the onus of proof is however provided in the International Convention on Civil Liability for Oil Pollution Damage (Brussels, November 29th, 1969). It seems to me that sooner or later such a procedural device will have to built into such regimes.

b. Transboundary procedural problems

The transboundary nature of the regimes produce particular problems: Thus two obligations arise:

- The one obliging the State of origin to **provide procedures** for dealing with such damages and
- the second obliging this State to provide an **access to such procedure** to foreigners without discrimination. That this is a problem not easy to solve is confirmed by national judgments which even did not recognize a *ius standi* of foreigners for the purpose of the access to such procedures or applied exclusively the principle of territoriality which excluded foreigners from the benefit of the domestic legislation. Only to quote a simple matter: Already the transboundary **information** raises certain problems since such informations issued by a domestic tribunal constitutes a **sovereign act** of a State which could be deprived of its legal effect if extended to individuals within a foreign jurisdiction. As can be seen from the discussions held in the ILC in the course of dealing with the prevention issues, the transboundary information of environmental risks is sometimes still be seen as involving political elements so that it was not easy to achieve consensus on the public participation in a transboundary context, of great assistance being the **Aarhus Convention**.

Further problems are those of the **recognition** of foreign judgments (exequatur) and the question of the **applicable law**. The OECD has devoted substantial work on these issues and produced a number of resolutions to this effect. Generally, these issues are mainly settled within the regime of judicial cooperation although some conventions provide special provisions to this effect.

c. Other procedural issues

- Further procedural problems stem from the particular system of compensation as it could be asked in which way the **second and third tier** could be seized for the compensation purpose. Different possibilities are envisageable: One would consist in the right of the victim to seize the operator for the almost entire damage and the right of the operator to be reimbursed by the other tiers whereas the other possibility consist in the right to direct action immediately against the other tiers. In this latter case, it must be ensured that the State by invoking State immunity is not immunized against any action by an individual.
- An issue which in my view is still unresolved is that of the **relations between the different legal systems** called to cover any damage: So for instance if a State does not provide the legal system required for certain hazardous activities and damage occurs: In such a situation it will not be easy to define the amount of the share of

compensation obligation to be allocated to the State and to the operator. In such situations it could happen that the system of reparation and that of liability would be competing.

- Further, the raising concerns of a general protection of the **environment** has found its expression in the extension of the definition of the damage to the environment where a loss is not caused to a particular person but to the environment such as certain species of animals. In such situations, the question arises which **entity or person should be entitled to institute proceedings**. Frequently, reference is made to relevant NGO's being competent in this field. However, States hesitate to accord such entities a *ius standi* in local courts for a series of reasons: the reluctance of international treaties to grant such a right (with few exceptions) only reflect this hesitation. A further issue in this connection is the measurement of such damage since it is very difficult, for instance, to define the loss suffered by humanity resulting from extinguished species. Some treaties provide a certain nominal sum to be used for a general social purpose.

9. Matters outside the scope of liability

This presentation of the main features of liability regimes reveals that certain matters remain outside the scope of such regimes, in other terms, that such regimes are unable to cope with them. Two different matters are to be mentioned in this regard: the matter of **unidentified sources of damage** and the matter of **prevention**.

a. Legal devices in case of unidentified sources

So, for instance, such a regime cannot deal with situation where **no evidence** of the causation of damage can be established, except that damage occurred. This situation occurs rather frequently when certain damage such as pollution of a river has been spotted, but the source of such damage cannot be discovered. A **liability regime** deals with the consequences of the causation of damage so that a **necessary prerequisite** for the application of such regime is that the **source** of the damage can be **established**. In this regard it is not necessary to identify the very activity which caused the damage or the person which had performed this activity, it would suffice to identify the **entity from which the damage originates**. Of course, there exists a **interdependency** between the application of the **liability regime** and the **identification** of the source: If a damage is spotted in a river, which could originate in various upstream riparian States, no liability regime can be applied. If it can be established that the damage results from **one State**, a liability regime can be applied only insofar as the liability regimes defines the **State itself** as entity liable to cover the damage. If the regime defines the

operator as the liable entity, its application requires the identification of the relevant **company** or **entity** from which the damage originates. Despite the distinctions, both cases nevertheless require the identification of the entity held liable by the regime.

However, a regime which envisages a remedy for damage the source of which is **totally unknown cannot** be called **liability** regime although the frequency of such situations call for such a remedy. Such a **legal device** can be connected with the liability regime, it must, however, be taken into account that it does not belong to it. Such a legal device could foresee a compensation for the damage by those who benefit the most from such activities; this could include even the State as a whole. A different justification for such shift of burden of compensation to the community could be the aspect of sacrifice insofar as the victims sacrificed their property in the common interest; again a different one would be the aspect of solidarity with victims of damages.

b. Prevention

As already indicated, the first result of the work of the ILC on liability consists in draft articles on **Prevention of transboundary harm from hazardous activities**. It has to be borne in mind that these draft articles are **not linked with liability**, but with responsibility as was acknowledged by the working group this year. Nevertheless, it would be worthwhile to drop some remarks relating to this result. Its basic ideas are:

- it relates to **activities not prohibited** by international law
- It imposes on the States of origin the basic duty to take all appropriate measures to **prevent** significant transboundary harm or at any event to minimize the risk thereof
- Such activities may be conducted only **after being authorized** by the State
- State are obliged to conduct an **assessment of risk** before authorization
- There is a duty of **information** and respecting the **interests of potentially affected** States
- The obligation of taking **precautionary measures** is subject to a **balance of interests** of the State of origin and the potentially affected State
- State have to ensure **public participation**
- The draft articles provide a **compulsory fact finding** for the settlement of disputes.

It is quite interesting to note that these draft articles received generally a relatively favourable reaction in the 6th Committee although some criticisms were voiced with regard to certain

provisions. It seems that these draft articles are the first step towards generally applicable regulations in this field.

10. Conclusions

This presentation aimed at revealing that international law already has become aware of the problem of liability in the transboundary context. Several solutions have been designed for this purpose. The practice hitherto which consists in the elaboration of special liability regimes for special cases, forces one to ask whether a **general system** would be achievable. The ILC is now starting the discussion on this so that its further work will reveal whether such a gaol can be achieved. However, irrespective of this possibility, in the light of increased activities involving hazardous activities and substances, it is needed to elaborate regimes for this purpose for several reasons: Such systems are in the interest of victims not only in order to cover the loss they suffer, but also to force the operators to use greater precaution in the performance of such activities. Hence, it is the general community which benefits from such a regime and if such a regime is drawn up this objective must be the guiding principle for its elaboration.