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Overview

I. Challenges

II. Private claims

III. State responsibility and liability

IV. A proper liability scheme for CCS - Conclusion

I. Challenges

Different scenarios to be taken into account:

- Blowout –
 - possibly with damage done to life and property
 - but also causing environmental damage
- Leakage – detrimental impact on local environment at spot
- Leakage – assumed to contribute to the already critical concentration of CO2 in the water

II. Private Claims

Tort Law

- Damage done to life, health, property
 - Including State property
- Claims by privates / States in their capacity as private owners
 - Facilitated under some jurisdictions:
 - Environmental liability laws etc.
 - Reversed burden of proof or strict liability
 - Coverage of cleanup / mitigation
- International aspects
 - Conflict of laws
 - No special rules – Lugano convention not in force
 - *Lex loci delicti commissi*

III.1 State responsibility and liability – overview

- Specific international rules – not applicable
- Customary international law
- State responsibility (responsibility for breach of an int'l obligation)
- State liability for damages caused by acts not prohibited under int'l law

III.2 State responsibility and liability – general principles

- Customary international law
- ILC draft articles on State Responsibility
 - breach of an international obligation, such as UNCLOS, London Convention / Protocol, OSPAR
 - liability

III.3 State liability for non-prohibited activity *general*

- Earlier unsuccessful ILC project on State liability for activities not prohibited under international law – discontinued in the 90s
- Customary rules on State liability for ultra-hazardous activities (nuclear etc.)
- New ILC projects
 - Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 2001
 - prevention, cooperation
 - Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006
 - Calls for the establishment of specific regimes

III.4 State responsibility / liability in marine context UNCLOS

Article 235 UNCLOS - Responsibility and liability

- 1. States
 - responsible for fulfilment of their international obligations concerning protection and preservation of the marine environment.
 - ... liable in accordance with international law.
- 2. States shall
 - ensure that recourse is available ... for prompt and adequate compensation or other relief
 - in respect of damage caused by pollution ... by natural or juridical persons under their jurisdiction.

III.4 State responsibility / liability in marine context UNCLOS

Article 235 UNCLOS - Responsibility and liability

- 3. ...States cooperate
 - in the implementation of existing international law and
 - the further development
 - of international law relating
 - to responsibility and liability
 - for the assessment of and compensation for damage and the settlement of related disputes,
 - ... development of criteria and procedures for payment of adequate compensation,
 - such as compulsory insurance or compensation funds.

IV. A proper liability scheme for CCS - Conclusion

- Under the London Protocol or OSPAR?
- Private liability or State responsibility/liability
 - Likely State responsibility/liability plays a prominent role.
 - This is so especially, as Art. 18 of the Draft EU Directive envisages a transfer of responsibility to the authority
- Could contain
 - Elements of strict liability
 - Methods of calculating a damage
 - Compulsory insurance

IV. A proper liability scheme for CCS - Conclusion

- Proper definition of objective:
 - coverage of cleanup costs /Compensation for damage
 - incentive for proper care
- Questions:
 - What if damage can't be repaired
 - Proper linkage with emission trading schemes