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THESIS

(Summary)

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Liability for Environmental Damage in International Law

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„Peace, development and environmental protection
are interdependent and indivisible."
(1992 Rio Declaration on Environment and Development, Principle 25)

I. The Subject and Aim of the Research and Research Methods Applied

1. Subject and Aim of the Research

As for the subject, the thesis surveys the entire concept of environmental liability seizing its inherent substantial connections to the field of public international law. However, it must be stated that the roots of the subject are traced back to the fundamentals of domestic private law and particularly private international law. Subsequently, the research has necessarily and knowingly concentrated on the boundaries of (public and private) international law as well as the basis of environmental law.[1] As a matter of fact, the latter category regularly forms and focuses on the essential legal institutions and solutions on such a way that a model-like adaptable option could be transformed into the previous legal branches.

The analysis also embraced the examination and explanation of legislation concerning certain controversial questions, thus the aim was originally critical, even more critic-oriented, due to the gaps and lacunae of the given field, while it is worth mentioning that the issues of the incomplete institualization pervades the thesis. There was a defined aim during the research process that the emerging deficiencies of the analysed subject shall be emphasized page-by-page, line-by-line with an implicit and humble motive of the author to provide practical and beneficial opportunity for international and domestic actors being responsible for the improvement of numerous issues of the subject.

The realization and articulation of such kind of overlaps and obstacles may provide methods for solving and rectifying the anomalies enumerated within the single chapters. The international legal aspects of environmental liability determine and predestine self-standing controversies comparing with the domestic legal systems, notably contemplating

[1] In the Hungarian legal language, the term 'environmental law' has several meanings and translated versions; the author accepts the proven terminology assumed by some experts. From those experts and on their influential articles, see FODOR, László: A környezethez való jog dogmatikája napjaink kihívásai tükrében [Dogmatics of the Right to Environment in the Light of Challenges of Our Days]. *Miskolci Jogi Szemle*, Vol. 2 (2007) No. 1, 5-19. and BÁNDI, Gyula: A környezethez való jog aktualitása [Actuality of the Right to Environment]. *Rendészeti Szemle*, Vol. 57 (2009) No. 1, 17-32.

administrative law and environmental law, as well. The causes, as outlined repeatedly, are at least two-folded:

i) *firstly*, several specific and distinctive characteristics of international law shall be taken into consideration in comparison with domestic legal systems (unique legislative issues, unique rules, unique forms of handling inter-State issues);

ii) *secondly*, due to transboundary character of environmental damages, the attribute of bilateral, regional and universal damages may require different underlying rules and altered means of dispute settlement methods on the grounds of nature of damage and other criteria.

The thesis takes an in-depth scrutiny within the framework of the so-called *triad* established by i) *public and private international law*, ii) *environmental law* and iii) *responsibility-liability law*. The complexion of ‘matrix’ and network being perceptible among the aforementioned three fields may determine the key legal anomalies accumulated herein and demanded by positive law. In addition to that and beyond positivist approaches, the customary international law and case-law (judge-made law) as well as didactic, for instance academic and scholarly, views can elaborate the “escaping way” in order to initiate efficient liability rules regarding the sophistication of specific areas of international environmental law suffering damages.

Before embarking upon a deep scrutiny and referring to the aim and task of the research, firstly, the thesis considers to be useful to posit and define the notion of environmental damage (including any other various phrases and layers within its own sphere such as adverse or negative effect, injury, harm, loss and impairment, etc.), upon which an added value of the dissertation may be clearly emphasized. The thesis takes a stand on ideal and holistic definition. The content and component of the term ’damage’ is a crucial issue, whether it incorporates only emerged, occurred, concrete and measurable damage or collateral costs and losses (such as costs of preventive measures, cost of restoration or evacuation, etc.) or indirect damages (such as damages exposing their effects in the sequel, after long time, as it is accepted in the case of health effects or contamination after decades) are included, as well. Leaving this question to be uncertain would be misleading and it was taken for granted that this issue has to be utterly expressed and elaborated.

Afterwards, within the diversified framework of international treaties, EU-law and judicial practice concerning the comprehension and exact notion of damage, the liability-responsibility debates considered here reflect and outline an essential role which is inevitable

in order to describe the substance and added value of liability and responsibility in a general way, as well as environmental liability v. (theoretically) environmental responsibility, specially. The entire issue must be founded on a predefined and accurate damage, which may be obligatorily required as having been incorporated into the sources and legal forms covered by the normative parts of the thesis. In a general consideration, environmental liability overwhelmingly dominates the analysed field, while, and in this regard it is well to note, the responsibility issue by itself has different subject and legal consequences. Permeability cannot be envisaged as a possible way or is thought to be the cause of further anomalies.

Referring to the liability-responsibility debates, as for the codification activities of International Law Commission (the Commission, hereinafter ILC, is an auxiliary body of the United Nations General Assembly being responsible for the promotion of the progressive development of international law and its codification), the distinction comes into the sunlight, upon the in-depth overview of draft articles and principles adopted by the body of experts of ILC. The term 'liability' means the breach of primary norms, which is an obligate prerequisite of secondary norms being unfolded within the domain of responsibility. To abstract from breaching norms, the term 'liability' can concentrate on and can be based upon lawful but harmful activities, as well. As opposed to this statement, the term 'responsibility' shall be already based upon unlawful acts, thus firstly, it focuses on acts prohibited by international law and secondly, it reflects and, what is more, remedies the aftermath of breach of primary norms.

The thesis consciously exceeds the frames and regularly limited boundaries and interpretative domain of environmental law, thus the utmost forms and various layers of environmental damage are inherently considered and widely detailed, irrespective of their systematic "affiliation" (whether it is reckoned as typically environmental issue or not in a strictly speaking). For the sake of extensive argumentation and coherence, the environmental effects of armed conflicts are out of the scope, for the simple reason of eliminating the approach that would require an in-depth analysis of the rules of armed conflicts, which would excessively broaden and fragment the unity and consistency of thesis.[2]

After placing the "marking stones" of the research, firstly, the essential legal institutions had been examined with special regard to their legal historical roots, deriving from Roman law; secondly, the wide-spread theoretical, descriptive analysis in a detailed form is

[2] On the early scrutiny relating to the issue of 'ecocide' in the Hungarian legal literature, see BODNÁR, László: Az „ekocídium" kérdéséről [On the Question of „Ecocide"]. *Jogtudományi Közlöny*, Vol. 29 (1974) No. 5, 230-239.

indispensable in order to reveal the whole subject of the given field. This method strongly features the whole structure of thesis and is dominantly capable not merely of reviewing but assessing the subject.

2. Research Methods Applied

2.1. Scrutiny of Codified Rules and Customary Norms

The ambitious aim of the thesis was to carry out an in-depth analysis on the relevant treaty-based and mainly universal regimes within the field of international environmental law and liability law. Otherwise, the civil liability-based regimes appreciably determine the complete topic, thus the review on liability-issue especially on liability-pillars and liability tiers was a core research aim to be conceived of at the beginning. Moreover, during the period of research it seemed to be inevitable that the State practice and domestic legal solutions, in due form, would be covered and included, as these norms and models not only supported but, in an effective way, induced international regulation.

In this regard, it must be stated that EU law – by means of its acts as primary and subsidiary EU norms – could and should provide and not only provide but point out forward-looking premises when the general environmental liability mechanisms and the EU's modus are basically compared and overhauled.[3]

Besides, the *opinio juris sive necessitatis* may not have been left out of consideration. Due to the so-called embryonic and fragmented field of subject under scrutiny, an empirical and practical source of obligations must be conceived in such a way that this *opinio juris* can foster the evolution of norms and to offer efficient methods within the framework of regimes "suffering" from shortage and anomalies. International custom as evidence of a general practice accepted as law (as the point 1. paragraph b) of Article 38 of the Statute of the International Court of Justice follows) can solve numerous cases in which the basic issues and requirements of liability rules virtually lack.

On the ground of the aforementioned field, certain *soft law* documents are thoroughly construed and are capable to set standards on issues lacking precise and exact means and methods. There can be little doubt that the most important soft laws are the draft articles and

[3] As for underpinning this note, see *Directive 2004/35/CE* of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

draft principles adopted in the first years of the 21st century by the ILC.[4] The importance of these documents are verified by their roots being traced back to centuries in customary international law as existing practices, and the simple fact should be also noted that the International Court of Justice referred to these documents several times as compilations of international customs and the work of a brief and exact summary of *opinio juris*.[5]

However, the normative parts of the thesis and its relevancy had priority in the making, but the author has to admit that neither *hard law*, nor *soft law* should not be underestimated within the sphere of environmental liability in international law; thus, these categories should be mutually adverted.

2.2. Scrutiny of Case Law

Under this research method the environmental-based practice of numerous international courts and tribunals are taken into consideration. A great number of major and celebrated cases had been awarded and delivered in the last century, which judgments/orders/awards have a serious impact on the given field. Strictly speaking, these cases are considered to be precedents, and it is needless to highlight that international law does not explicitly accept precedents (in such a way as the Anglo-Saxon legal system applies these sources).

The parts on scrutiny of case law concentrate on memorable argumentations concerning *stare decisis* and *ratio decidendi*, which have high levels of importance in several cases within the field of international environmental law or liability law, such as arbitrational awards (1938 and 1941 Trail Smelter Case, 1957 Lake Lanoux Case) and the in-depth scrutiny of case-law of the Permanent Court of International Justice, the International Court of Justice (high number of pending cases), the International Tribunal for the Law of the Sea, the European Court of Human Rights as well as the American and African equivalents (mainly mild connecting points) and last but not least the European Court of Justice relating to such cases in which the environmental or liability concerns could frame an "added value" to the evolution, articulation and development of environmental jurisdiction. The so-called "flagship-cases" can ameliorate and promote not only the unified and universal jurisdiction and practice but also the approximation of divergent regimes. The conclusions of judge-made

[4] Cf. 2001 *Draft Articles on Responsibility of States for Internationally Wrongful Acts*; 2001 *Prevention of Transboundary Harm from Hazardous Activities* and 2006 *Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities*.

[5] For instance, see the judgment delivered in the Gabčikovo-Nagymaros Dam Case in 1997, especially paragraph 58., 79., 83, 94., 122. and 123.

opinions drawn in such flagship-cases had provided considerable assistance to the author in the selection of argumentation and regarding the course on the subject.

2.3. Scrutiny of Legal Literature

As the subject had been embedded, the main task was to treat utterly the pertinent Hungarian legal literature and to elaborate the question with the utilization of the foreign legal literature (mostly the monographs and articles written in English) citing them profusely. The author endeavoured to focus on relevant approaches and lateral thinking.

Three influential works were "black lines" which were seemed to be orientation points in case of uncertainty or contradictory issues.

Beginning with a Hungarian connection, the Hungarian-born Alexandre KISS' and his fellow author's, Dinah SHELTON's work (*International Environmental Law*) must be mentioned.[6] Besides, the books of Patricia BIRNIE and Alan BOYLE (*International Law and the Environment*)[7] as well as a summarizing all-round handbook edited by Daniel BODANSKY, Jutta BRUNNÉE and Ellen HEY[8] were among the sources and didactical samples which could give considerable assistance to the author during the process of writing.

II. Structure of the Thesis

The thesis consists of four separate parts, then each part is divided into chapters referring to the interconnected and coherent issues in conjunction with measures, while the chapters are parted and further specified into points and sub-points, where it seemed to be effective and remunerative for the sake of transparency and easy understanding.

The *first part* of the thesis deals with the notion of damage and its relevancy within the framework of liability-based regimes. After delineating the essential fundamentals of research, the work reviews the numerous versions of environmental adverse effects adopted in

[6] KISS, Alexandre – SHELTON, Dinah: *International Environmental Law*. Third Edition. Transnational Publishers, New York, 2004. 837.

[7] BIRNIE, Patricia – BOYLE, Alan: *International Law and the Environment*. Second Edition. Oxford University Press, Oxford, 2002. 798.

[8] BODANSKY, Daniel – BRUNNÉE, Jutta – HEY, Ellen (eds.): *The Oxford Handbook of International Environmental Law*. Oxford University Press, Oxford, 2007. 1080.

several international instruments. The classification of regimes bearing importance is strict, serves as an orientation point and advances the systematisation of the given field.

The thesis points out that the analysed subject has at least four problematical factors related to the definition methods, which simultaneously impede the unification and efficiency of environmental liability. The causes or factors are multi-fold, having been read in the followings:

i) *the latency of detrimental effects of environmental damages* is extremely probable (such as health effects), thus the causal link between the accident and the effect can be easily receded, while several other impacts can intercept and bewilder the causation. The environmental damages can be, in the meanwhile, either intensified or diminished by inputs derived outside the causal linkage;

ii) the *components of contamination* are heterogeneous, most of them are unattached to the given activities (*vis maior*), thus the identification of the liable part is fairly cumbersome, because exact delimitation between indirect and direct causes of damage is often considered to be unreachable;

iii) the *spatial factor* of environmental damages is relevant, most of damages have a long-range and transboundary character irrespective of boundaries and continents, thus the roots and origin of contamination or accident are, severally, hardly to be allocated and retraced;[9] and

iv) *certain activities* threat only the environment of future generations and not the present generations' environment. The lack of scientific certainty is also a crucial question, which should not be underestimated. Consequently, it can easily appear that tangible dangers and negative effects are not occurred in the present (which is a prerequisite to liability issues to be ascertained).

Amidst the research, the author applied two approaches based upon two conceivable regimes on the subject. *Sectoral* and *intersectoral* approach can emphatically provide several solution-ways in the lack of universal and generic notion of damage by fragmenting a given regime to sub-regimes with capable measures and legal institutions separately. The sectoral field

[9] For a long while, causing environmental damage had been considered as an issue being relevant only within neighbouring States. The real paradigm shift was due to the 1972 Stockholm Conference, where the 1972 Stockholm Declaration had been adopted with the crucial word of the extended term of *environment* instead of using the tightened term of *area*, which „morphological fine-tuning" has great relevance in the given field. Cf. BRUHÁCS, János: *Nemzetközi vízjog. A nemzetközi folyóvizek nem hajózási célú hasznosításának joga* [The Right of Water in International Law. The Law of Non-Navigational Uses of International Watercourses]. Akadémiai Kiadó, Budapest, 1986. 158.

(containing treaties on elements such as flora, fauna, water, air, soil, landscape and man-made environment, as well) and intersectoral way (for instance, interdependence between the aforementioned elements) can guarantee such research methods and separate textual base, upon which the main question of the first part, scilicet the definition of environmental damage, is to be convincingly clarified.

The *second part* analyses the positivist and norm-centred substance of the aimed research subject as well as object proposed. The definitive anomalies should have been inevitably remained in the focus, while it is dubious to draw an obvious distinction between liability and responsibility, thus it deeply determines the whole issue. The main task was to examine the frames and borders of notion and scientific, theoretical content and standard of the two terms seeming akin to each other without profound scrutiny. The author made the conclusion that rules of environmental liability as a field determined by primary norms may be acquired from public and private international and domestic law as well as from EU law. Strictly speaking, the scope of environmental liability has its origins in domestic civil laws irrelevant of international law. The international actors, after long time, concluded in the 1960s that the regimes containing civil liability rules (nuclear liability and oil pollution) should adopt and implement the rules, the causation, the exemption methods, the legal institutions and the sanctions of liability rules of civil laws based upon Roman law. The result is clear, this original composition and long-living concept thoroughly affects the net of liability regimes (irrespective of whether it is sectoral or intersectoral regime) both in existence and under development, as yet.

The author accepts *Bibó*'s opinion, published in 1934, that public international law cannot recourse the means of sanctions (then public international law and comparing with the domestic legal systems – the author).[10] It must be stated that the old wine (symbolizing liability-concept) remained in old bottles (representing the legal environment of international law); however, numerous significant shifts had been attained, such as the slight decline of absolute sovereignty of States with special regard to their decreasing immunities in case of damage; besides, new categories and non-fault forms of liability were also explicitly materialized in a certain way. The liability channelled to non-State actors (multinational firms or private plants located near borders producing harmful wastes, stuffs), concretely obliged to operators, suppliers, owners, etc. determines the most regimes in the given field; in addition, legal consequences of transboundary environmental harms shall not impose liability on the

[10] Cf. BIBÓ, István: *A szankciók kérdése a nemzetközi jogban* [The Question of Sanctions in International Law]. Szeged Városi Nyomda és Könyvkiadó Részvénytársaság, Szeged, 1934. 5.

direct side of States. The "escaping ways" of States from liability are well known owing to the layers of *raison d'État*. There is no treaty applying State liability (except for the 1972 Liability Convention for Damage Caused by Space Objects) entered into force, which was a direct consequence of decades-long State practice and attitude having been manifested in the forbearance of stipulating treaties covering State liability. The practical interest and reason of ignoring State liability may have induced such a situation therein the term civil (non-State) liability determines almost exclusively all fields of environmental liability. The residual liability of States, in the lack of the liable part or in case of inadequate financial pools on the side of the liable part, is a potential but rarely applied option.

However, the linear way of channelling liability remains simultaneously within the framework of private international law and domestic civil law.[11] It is worth mentioning that it reflects the generally accepted view as the international environmental law includes the norms of international law being applicable to environmental problems and threats.

The *third part* summarizes the connected and subject-oriented judicial practice, therein the survey embarks upon to analyses not only the leading-cases of international environmental law but the thesis has the aim to alight on an added value of international judicial fora by fostering the institualization of environmental jurisdiction in the light of damages. To simplify, the judicial practice serves as a (secondary or subsidiary – the author) source of international law, as Paragraph 1. d) of Article 38 of the Statute of the International Court of Justice refers to its role in applying these sources to decide in accordance with international law such disputes, which are submitted to the Court.

The international community could manifestly witness proliferation of international judicial fora, thus the number of arbitral awards had been decreased in spite of the popularity and acknowledgement that these processes could garner between the world wars, especially in the 1930s. The symbolical and celebrated Trail Smelter case was the first international judicial case wherein the subject of debate was embraced by the embryonic norms and requirements of environmental law (but rather liability-responsibility approach was cardinal). However, proliferation is an obvious process of self-evident development and institualization of entities; which, on the other hand, may increase the number of cases and demand the

[11] A notable source states that international environmental law also includes not only public international law, but also relevant aspects of private international law, and in some instances has borrowed heavily form national law. See BIRNIE – BOYLE: *op. cit.* 1. On the prominent overview of its concerns with private international law, see ld.: BRUHÁCS János: A határon túli környezeti károk orvoslásának problémája: nemzetközi magánjogi egyezmények [The Problems of Remedies of Transboundary Damages: The Treaties Relating to Private International Law]. *Jura*, Vol. 11 (2005) No. 1, 48-60.

specific proficiency on the side of courts and tribunals entailing the added value of this procedure, namely the (organic) evolution of environmental jurisdiction.

The thesis reveals that several pending environmental cases can be found on the lists of ICJ and ITLOS (and the situation is similar as for the human rights fora in a certain way), these judgments or other kinds of awards will be delivered either in the future, but it has to be stated that the *stare decisis* (or *ratio decidendi*) as well as the argumentation of those awards will notably develop the domain of international environmental law and liability for damages with several debated issues to be theoretically resolved. Certain international judicial fora delivered awards and judgments as well as these bodies declared principles, which are regarded to provide for sources and favourable background to customary norms, thereupon these norms and soft law documents had auspiciously promoted the development of substantive norms of international environmental law.

The *fourth part* provides for a single and separate section to draw the relevant and established conclusion having been unfolded in the previous parts. The original purposes and the scientific results attained are particularly compared in a summary-like manner. As a synopsis, this part synthesizes the main aspects of environmental liability, in witness thereof the notion of (environmental) damage, the legal domain of evolving liability and the jurisdiction of relevant courts and tribunals had been explained and examined.

III. Summary of the Scientific Results and Their Practical Applications

1. Summary of the Scientific Results

The thesis embraced the notion of environmental damage and its all relevant implications within the sphere of international law, besides the main part devoted a prolonged analysis on liability-based treaties. The sectoral and intersectoral approach and classification had favoured and provided a remunerative forum for surveying the liability field in its own unity or, as for the sake of pertinence, in its own fragmented system.

The lack of unifying mechanisms and purposes clearly demonstrated that the States as well as the relevant policymakers and actors are not interested in creating norms of permitting of the unification of regimes with higher and developed efficiency. The endeavours for constituting a unified, universal and all-round regime within the domain of environmental issues shall evidently discourage and deflate the interest and activity of States in the

preparatory works. Thus, the *corpus* of international environmental law henceforward commands diversified mechanisms on definition, causation, liability-channelling, sanctions and dispute settlement, hereby extinguishing those positive and auspicious methods that would easily accommodate the incomplete regimes. In addition, 'intersectoralism' shall be considered as the key issue in this process, as the obligate and accepted sectoral means objected and encumbered the unification and the paradigm shift toward the approximation of the single regimes entailing considerable advantages. The failure and fiasco of this efforts had been proved by the case of *1993 Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (not in force) that contains a wide-range notion of damage and beneficial but unusually far-gone rules on liability (as for causation, channelling and exemption, as well). These facts are already sufficient to obstruct the entry into force of the convention for almost two decades. Albeit, it is necessary to note that the novelty of the convention is uncontroversial and model-like. It is well to note that in the compilation, the major liability regimes by themselves lack the capacity to set high standard which could be regarded as precise and sufficiently capable of promoting the development of the given field.

There was a widely accepted opinion at the dawn of classical period of international law that responsibility of States (at that time, liability was also included into the concept of responsibility)[12] must be based upon a certain fault on the side of the responsible (liable) part. This fault-based concept was presumed on an axiomatic paradigm that responsibility-liability of States with unbounded and unlimited sovereign peculiarity (at that time, absolute monarchs) shall have been imposed on fault (intention and *culpa*) of States. However, to describe the law of State responsibility as based on fault is misleading and liable to confuse.[13]

The aforementioned paradigm was prevailing until the end of 19th century. The legal thoughts within the period in question presupposed the view of the ground of State responsibility-liability that this fault-based responsibility must have been attached to the exclusive territorial jurisdiction of the single States. The real paradigm shift has occurred due to the altered scope of the authority and jurisdiction of States, which favoured the legal

[12] See GROTIUS, Hugo: *A háború és a béke jogáról* (*De iure belli ac pacis*) I-II-III. [On the Law of War and Peace: Three Books]. Fordította [Translated by]: HARASZTI György – BRÓSZ Róbert – DIÓSDI György – MURAKÖZY Gyula. Akadémiai Kiadó, Budapest, 1960. II. könyv (Second Book), XVII. fejezet [Chapter XVII] és XX. fejezet [Chapter XX] 2.

[13] See BIRNIE-BOYLE: *op. cit.* 183. The term 'fault' is overwhelmingly covered by domestic civil laws, and owing to its analogous aspects and the experience lurked in its practical application. Furthermore, this legal phenomenon shall govern the similar institutions of international law, as well. International law has no (and needs no) own and proper variation for fault; therefore, the domestic legal frames of fault suit well and shall be borrowed and adopted without further complications.

environment to set up new responsibility and liability clauses. Bearing in mind, for instance, the occurrence of these new clauses has even covered the newly created rules on environmental liability and responsibility for internationally wrongful acts. The spread of the consequent influences proves the unique and specific area of environmental liability. The various layers of liability had been stamped as predetermined pillars and criteria by the first liability regimes, such as nuclear and oil pollution liability. These regimes of the 1960s have primarily prompted a radical change on liability aiming to harmonize the domestic solutions of participating States under the 'lowest common multiple' of non-fault based civil liability with exemptions, which was an admissible option unifying the specific needs and essential interests of member States.

The further causes of paradigm shift were several:

i) as for the public and State actors, the approach of the protection of environment had been notably changed from the 1970s;

ii) the number of treaties stipulating numerous fields of protection of the environment had significantly increased;

iii) the frequency of the claims before international judicial fora signs an unequivocally cumulative trend; and

iv) the altered scope of States and their jurisdiction has deeply leveraged the given subject.

However, the judicial practice exemplifies the viewpoint that the sovereignty of States is no longer exclusive as this criterion is – more or less – circumscribed by codified and/or customary norms. For instance, it is included to 1972 Stockholm Declaration (Principle 21 and 22) and 1992 Rio Declaration (Principle 2), which (the latter) reads as follows: "*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*"

As for the illustrating quotes of previous paragraph, the international community is explicitly witnessing the trend that „the practice of channelling environmental liability

towards private actors in national law is now a widely developed alternative to the international liability of states in cases of pollution damage."[14]

The thesis draws the cardinal and substantive conclusion that the traditional liability concepts, particularly the civil liability concepts could and should be harmonized with and adopted, transformed or applied favourably to the international liability and responsibility theories with an intention for advancing the codification of State liability and State responsibility in a developed manner, because these rules are still evolving and in a deep need of further institualization. Furthermore, the judicial practice with its argumentation has a noteworthy role in the form of *communis opinio doctorum* by means of availing the main courses of legislation as well as the State efforts in their international relations.

The responsibility or liability of States is no longer a futuristic and utopian way, the States can be widely obliged, albeit it must be stated that the preservation and 'dominance' of civil liability within the framework of treaties of environmental concerns seems to be a certain and permanent solution henceforward due to *raison d'État* of excluding methods, which can theoretically jeopardize their relative "immunity" or exemption from liability and responsibility issues.

Bearing in mind the numerous statements and conclusions, in the hope that the legislators as well as readers have the possibility to understand some crucial but controversial issues, the thesis explicitly considers aims, means and development prospects through introducing international regimes with an outlook on EU and some domestic appropriate aspects.

2. Practical Applications of the Conclusions

The theses concluded could handily promote both the dissemination of scientific and academic results achieved and the solution of domestic and international legislation on such a field that is deeply influenced by anomalies detailed in the main parts. The public may benefit from the conclusions drawn; and in addition to that, the analysed issues and controversial problems had not been symbolically summarized in a form of monographic way in the Hungarian legal literature.

The requirement of unifying the notion of environmental damage as well as the clarification of liability rules supported by compensation techniques should create a

[14] See BIRNIE-BOYLE: *op. cit.* 182.

developed legal background, therefrom Hungary can profit and benefit referring to a number of several cases, which are under discussion and are inducing as well as maintaining tensions in its inter-State relations regarding environmental concerns. Bearing in mind the *Gabčikovo-Nagymaros Case*, the *Chernobyl accident*, the *Tisza cyanide pollution*, the *pollution of River Rába* and the *case of wastes exported to Hungary*, which were stored and dumped in Hungary; these cases require of applying and resorting efficient rules, ways and fora of the utmost importance for dispute settlements. The solution cannot be imagined and accomplished without some concerning norms of international law and it is worth mentioning that the official State actors must consider henceforth the accession of Hungary to several treaties dealing with issues, which are akin to aforementioned current affairs of Hungary. It goes without saying that this attitude and act shall be depended on and reactive to the accession of the neighbouring States to such treaties. Furthermore, in a general way, the outcome of such resolutions shall be in accord with the scientific results and conclusions drawn by the thesis.

IV. Selected Publications of the Author

The Protection of the Environment in the Light of International Liability Regimes. In: Ecological Movement of Novi Sad (ed.): *Environmental Protection of Urban and Suburban Settlements. Proceedings II*. Novi Sad, Serbia, 2011. 171-176.

Deés v. Magyarország ügy az Emberi Jogok Európai Bírósága előtt [The Deés v. Hungary Case Before the European Court of Human Rights]. *Jogi Iránytű*, 2011/1. http://mta-ius.hu/page_8_hu/iranytu.html

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