

Climate Engineering and International Environmental Law - Call for a new Legal Framework?

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I. Challenges of Climate Engineering

II. Current Legal Status

III. New Legal Framework

1. Early stage of development
2. Unknown and uncertain side effects (scale and reversibility)
3. Unilaterally/Individually feasible
4. Risk of supplanting mitigation

II. Climate Regime - Objective

„The ultimate objective [...] is **stabilization of greenhouse gas concentrations in the atmosphere** at a level that would prevent dangerous anthropogenic interference with the climate system.“ (Art. 2 UNFCCC)

- Overarching goal
- Guidance for interpretation
- CDR: helps stabilization of GHG-concentrations
- SRM: no contribution to stabilization of GHG-concentrations

II. Climate Regime – Precautionary Principle

“The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures [...]” (Art. 3:3 UNFCCC)

- Ambivalent role
- Comparison of potential damages
- No general reversal of the burden of proof

II. Climate Change Regime – Principle of intergenerational equity

“The climate system should be protected for the benefit of present and future generations of humankind“ (Art. 3:1 UNFCCC)

- today's human activities should not cause unsolvable problems for future generations
- burden of climate change shifted to future generations
- possibly unmanageable risks for future generations

II. Other Environmental Treaties

ENMOD

- Environmental modification technique
- Military or hostile use only
- Peaceful purposes explicitly not hindered

Ozone Convention

- Human activities which modify or are likely to modify the ozone layer
- Likelihood of adverse effects sufficient

Convention on Long-Range Transboundary Air Pollution

- Endeavour to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary air pollution
- Deleterious effects only

II. Rule on transboundary environmental harm

“States have 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”

(Rio Declaration Principle 2)

- Obligatory rule of customary international law
- Obligation to take appropriate measures to prevent or minimize risks as far as possible
- Significant harm only
- More than reparation
- Obligation to identify risks (EIA, monitoring)
- Duty to cooperate (notification, consultation)

International Environmental Law

- Doesn't address Climate Engineering explicitly
 - Some abstract obligations
 - Variety of interpretations
- Admissibility and Governance of Climate Engineering widely unclear

III. New Legal Framework – Why?

1. Lack of specific provisions
2. Legal certainty
3. Time pressure
4. Social and democratic aspects
5. Research - Deployment

Design

- Sectoral Approach
- General Provisions within the Climate Change Regime

Contents

- Ultima ratio
- Contribution to climate protection
- Prevention of environmental harm
- Requirements for R & D
- Obligation to international coordination

Thank you
for your attention!

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