

Study on behalf of the Federal Environment Agency

International Corporate Liability for Environmental Harm
(FKZ 37 18171000)

This project is supported by the German Federal Environment Agency (UBA) and financed by the Environmental Research Plan of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). The aim is to critically review the regulatory structure of international liability law, in particular the existing legal framework surrounding cross-border environmental harm caused by corporations. Through this review the shortcomings in this body of law will be identified and recommendations for legislative action developed.

The project is led by the Oeko-Institut Inc. together with legal experts Prof. Dr. Remo Klinger (Geulen & Klinger, Attorneys at law, Berlin), Prof. Dr. Alexander Proelß (University of Hamburg), Prof. Dr. Kirsten Schmalenbach (University of Salzburg) and Dr. Roda Verheyen (Günther & Partners, Attorneys at law, Hamburg).





Project milestones – anticipated timeline

01.09.2018	Project Start
30.06.2019	1. Interim Report
31.01.2020	2. Interim Report
31.05.2020	3. Interim Report
06/2020	International Conference
30.11.2020	Final Report

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Regulation and Liability

The growing globalisation and interconnectedness of the international economy has increased the relevance of laws regarding cross-border and extraterritorial environmental harm. Serious risks to the environment and human rights frequently materialise within global value chains and emissions do not stop at borders. Currently national governments only have limited instruments at their disposal to deal effectively with the relatively new reality of a flexible and borderless world economy. Even where international rules do exist, there is often a lack of willingness or resources on the part of state authorities to enforce them. Thus significant regulatory gaps persist in the international governance of environmental common goods.



Damages caused by droughts as a consequence of climate change could give rise to liability claims.

Environmental liability law is often attributed with the potential to fill these gaps as it offers the means to obtain compensation for those whose rights have been violated by negative environmental impacts. In addition to this, environmental liability law can also have a preventive effect in that it creates financial risks, and thus incentives, for corporations to prevent environmental damage. Unlike traditional regulatory instruments which rely on monitoring and implementation by public authorities, civil proceedings may allow the victims of environmental harm to directly submit evidence substantiating their claims in court. This may better facilitate effective prosecution of Infringements

than public sector mechanisms. However, a comprehensive review of the complex framework of international liability law is still lacking; numerous fundamental questions remain unanswered: Can liability law better serve to create incentives to modify (potentially) damaging behaviour in today's complex global economy? What is the relationship between state and private responsibility for the environment? How can regulations on the national and international level better complement each other in a constructive way?

Objectives and Approach

This project scrutinises the function and mechanisms of liability law from an ecological perspective. Furthermore, it elucidates the relationships and interdependencies in the legal framework and thus contributes to the still evolving theory and doctrine of international environmental liability. The research results will be invaluable in raising the awareness of the necessity and potential to improve the

national and international legal framework. In particular it will assess the necessity and the alternatives to establish environmental obligations for private actors.

The different issues of the project will be addressed in seven work packages: first, terminology, objectives and the regulatory functionality of environmental liability law will be defined to establish the conceptual basis for the subsequent packages. Second, the international legal status of private actors will be discussed with a special focus on current debates and developments with respect to the legal responsibilities of corporations and other enterprises. In package 3, the liability regimes of concrete international agreements will be analysed before the fourth package examines the potential of using national law to regulate civil liability for transboundary damage. A separate section will then identify concrete regulatory options for anchoring environmental due diligence obligations in national laws which are effective across borders. In its final packages, the project focuses on two key aspects of environmental liability: In package 6, it will

clarify open questions and practical legal problems with regard to climate change litigation. In package 7, it assesses the research outcomes derived from the project in relevance to the increasingly important problem of geo-engineering.

The results of the project will significantly contribute to the international scientific debate by, among other things, an international conference which will be organised in Germany by mid-2020.

Project Overview

