



# CLIMATE CHANGE LIABILITY

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## Background

Climate change can be described simply as the gradual change in the climate over a period of time. However, beyond this definition, climate change is anything but simple.

As the harmful effects of climate change become increasingly obvious and the causes better understood, legislation and guidance is required, not only as a measure to prevent further damage from climate change, but also to provide redress to those who suffer as a result of climate change accelerated by human activities.

As climate change is a global issue, this guide will focus on the international liability; the liability states may face for their contribution to climate change.

## Legal Framework

Currently, there is no regime imposing liability for causing climate change - a state cannot be sued directly for causing climate change.

Further, the United Nations Framework Convention on Climate Change (UNFCCC), the leading legal instrument concerning climate change, does not provide for, nor even suggests, the need for any such liability regime.

Although there is currently no civil liability regime that can be directly applied to climate change, below is an overview of the different international legal frameworks which currently exist and which may establish indirectly state liability for climate change:

### *Rio Declaration 1992*

#### **Aim**

This was a short document produced at the "Earth Summit", containing 27 principles aimed at guiding future sustainable development.

#### **Key Feature**

Its key feature is found at Principle 2 which states that: "States have [...] the sovereign right to exploit their own resources [...] and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States."

### *UNFCCC 1992*

#### **Aim**

This treaty was also produced at the Earth Summit. Its aim was to stabilize greenhouse gas concentrations in the atmosphere to prevent further interference with global climate systems.

### **Key Features**

The treaty is recognition by the international community of the role humans play in climate change, defining it as: "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods."

As its purpose is to stabilise greenhouse emissions, it could be argued that those countries which frustrate this purpose should be open to liability. However, this is not the case - the international political consensus is that the Principle is non-binding and merely aspirational in nature. It is, nonetheless, a major step in furthering the climate change dialogue.

### ***Kyoto Protocol***

#### **Aim**

As a protocol to the UNFCCC, its aim was to further the fight against global warming by providing specific targets for lowering greenhouse emissions which signatory states have commit to.

#### **Key Feature**

States have committed to reducing carbon emissions and attaining the targets set within the Protocol. However, the Protocol notably lacks commitment from key international political players (and ironically polluters) – namely China, the USA and India.

## **Practical Challenges and Development Implications faced by NGOs**

Regarding the legislation currently in force, the main practical challenges which NGOs face is enforcement. Loose drafting and a general lack of political will by states to ensure the treaties are adhered to make enforcement difficult.

NGOs traditionally play an important role in lobbying and drawing attention to issues which need to be addressed and resolved, however changing the political will of those nations which contribute to climate change will undoubtedly prove challenging.

NGOs also play important roles in the aftermath of disasters. The climate crisis will cause increased flooding, droughts, freak weather, increased sea levels, famine and disease – all of which may lead to the creation of "climate change" refugees and political instability. Simply dealing with the increasing number of environmental catastrophes will prove to be a large challenge for NGOs.

A large practical challenge in itself, for both the international community and for NGOs, will be undertaking to create a state liability regime for causing climate change. The process will involve answering politically difficult and sensitive questions such as:

- Can individual actors be held liable for contributions to climate change if there may be hundreds of other actors who have also contributed?
- How should the law deal with the uncertainties of causation between emission, climate change and harmful effect?
- How does one quantify the loss to biodiversity, culture and tradition?
- What effects will any liability regime have on development of both industrialised and unindustrialised economies?

NGOs currently actively participate in the negotiations of international climate treaties and this is a platform which they should seek to exploit in driving the need for an international liability regime.

## **State Liability: An example of the use of current legislation.**

### *Tuvalu v United States of America and Australia*

In 2002, Tuvalu threatened to take the United States and Australia to the International Court of Justice as a result of their failure to stabilise emissions of greenhouse gas concentrations.

Tuvalu claimed that climate change has caused the melting of ice caps, which consequently lead to a rise in sea levels which threatened the territory of Tuvalu. The application was never made due to a change in Tuvalu's government; however, the matter demonstrates that despite the lack of an international regime providing for state liability, the current legal frameworks can potentially be used to impose liability.

## **Conclusion**

International law has no mechanism which allows states that suffer at the hands of climate change to seek redress from those states deemed responsible for causing climate change.

However, the likelihood of the international community agreeing to such a regime is low and as such for the time being, state liability is to be found indirectly amongst the increasing number of international law treaties which aim to deal with climate change.

## Further Reading

United Nations Framework Convention on Climate Change: <http://unfccc.int/2860.php>

United Nations Environment Programme <http://www.unep.org/climatechange/>

Climate Network <http://www.climatenetwork.org/>