

Liability and Compensation Mechanisms as Tools to Adapt to Climate Change

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1. Providing incentives for disaster risk mitigation

- Technological/man made disasters: liability rules
 - exposing tortfeasor to risk to provide incentives
- Natural disasters: insurance + alternative compensation mechanisms
- But....a blurred distinction
- Crucial: providing incentives + risk differentiation (where it makes sense...)

2. International law instruments

- Aircraft (Rome, Montreal)
- Nuclear (Paris, Brussels, Vienna)
- Marine pollution (CLC, Fund)
- Others...
- Strong focus on liability/man made disasters, less natural

(3)

3. Liability

Comparison of liability regimes in international treaties

Criterion	Rome	Montreal	Nuclear	Oil	HNS	Protocol	Space
Basis	SL	SL	absolute	SL	SL	SL	absolute
Liable persons	operator; liability of others not excluded	air carrier, but liability of others possible as well	operator	ship-owner	ship-owner	operator	launching State
Damage	cap	cap	cap	cap	cap	cap	-
Defenses	armed conflict; not natural disasters / terrorism	not terrorism / natural disaster	armed conflict and civil war; not natural disaster	armed conflict and civil war; not natural disaster	war; exception al natural disasters	war; exception al natural disasters	no defenses
Financial security	mandatory security	mandatory security	mandatory security	mandatory security	mandatory security	mandatory security (limited)	-
Additional funding			State intervention	fund	fund		

(4)

• Critics:

- SL: ok
- financial guarantee: ok
- channeling: problem
- caps: problem

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4. Additional compensation mechanisms

- Liability conventions
 - nuclear: States
 - oil: industry
- Or ex gratia payments
 - especially natural disasters
 - “catastrophic response to catastrophic risk”?
 - doubtful effect on disaster risk mitigation

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5. Preferred solution: first party insurance, but...

- Lacking demand:
 - mandatory insurance (France)
- Lacking supply
 - government reinsurer of last resort

[7]

6. Status quo - limits

- International environmental agreements limited in scope and number
 - linked to agencies
 - e.g. offshore
- Contents: doubtful (positive) effect on disaster risk mitigation (result of lobbying...)

[8]

7. Dynamic evolution

- Adaptation
 - marine: increased amounts
 - nuclear: slow
- Interactions
 - International - domestic (e.g. US)
- International – regional (e.g. EU)

[9]

8. Scope for policy change

- Learning from positive interactions (domestic-regional):
- No channeling, no caps (example PAA, OPA)
- Limit government payment to immediate relief
- Focus on (fp) insurance +
- Reinsurance of last resort by State
- In order to:

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Provide better incentives for disaster risk mitigation