



Environmental law: Transnational enforcement of rules to protect the environment

Protecting our vital natural resources poses major challenges for policy- and law-makers. This applies particularly to transboundary environmental problems and global climate change: once emitted, pollutants do not stop at borders and the globalised economy causes significant environmental harm. Mechanisms that are effective at the transboundary and often also the global level are therefore required.

Despite a growing awareness of the importance of *protecting the environment and climate*, numerous gaps still persist in international environmental law – and even where international rules exist, their implementation often leaves much to be desired.

Environmental law interacts in multiple ways with environmental policy, or “governance”, as it is also called.

International law to protect the environment

International environmental law has traditionally encompassed various fields of law; its sources include customary law, general legal principles and international treaties. International conventions regulate specific aspects of environmental protection or include them within their scope of application.

Due to the severity and urgency of the global environmental and climate crises, there is a pressing need to deepen forms of intergovernmental cooperation and boost their effectiveness. However, divergent and sometimes conflicting national interests make it far more difficult to agree ambitious and effective rules under international environmental law.

The problem: little willingness to cooperate, poor implementation

Governments often have little incentive to relinquish their freedom of action. In many cases, there are divergent views on who should bear the costs and accept the losses associated with preventing or mitigating environmental problems. All too often, short-term national interests count for more than environmental concerns or global welfare.

Legal developments at the international level therefore rarely do justice to the urgency of the problems. Furthermore, national environmental authorities often lack sufficient capacity to address complex transboundary issues and to implement and enforce existing international law.

The transboundary nature of environmental problems creates inherent difficulties: a public authority may have access to those responsible for causing harm at a domestic level, but may be unable to determine whether and to what extent damage has occurred abroad. Conversely, countries in which environmental problems are occurring may lack the regulations, institutions or resources that are necessary to hold polluters accountable, especially if these polluters are located abroad. This applies particularly to environmental harm caused by transnational corporations. It is difficult to control the dynamics of a highly complex and flexible transnational economy using traditional governance mechanisms.

“Polycentric” governance instead of top-down regulation

In light of these gaps in international law, extraterritorial regulatory mechanisms have gained in importance in recent years. They focus on areas where national law should apply on a transboundary basis. They can complement collaborative multilateral efforts to develop common rules for implementation and enforcement by states on their national territories.

Transnational product flows and supply chains are starting points for these mechanisms. For example, imports of goods may, under certain circumstances, be coupled to compliance with certain rules. Alternatively, German businesses may be required to abide by specific codes of conduct in their overseas operations and to accept responsibility for any damage caused.

Even with effective extraterritorial mechanisms, however, national authorities continue to face numerous challenges. Countries are therefore increasingly adopting new forms of governance at the interface between business and the state; described as decentralised or “polycentric”, they rely on the implementation and enforcement of rules by businesses themselves or involve other private actors such as standards organisations or certification bodies.

Environmental due diligence obligations under a Supply Chain Act

Corporate due diligence obligations are an example of this approach. In order to meet these obligations, German businesses must assess the impacts of their overseas operations on human rights and the environment, ensure fulfilment of international treaty provisions, develop measures of their own to mitigate the risks of infringements, and report publicly on their compliance with these commitments.

The development of the corporate due diligence concept was strongly influenced by the – non-binding – UN Guiding Principles on Business and Human Rights. It has now been adopted by numerous countries and transposed into law in various ways. The German Supply Chain Due Diligence Act, for example, requires German companies above a certain size to ensure that their overseas subsidiaries and suppliers **are complying with human rights and environmental standards**.

The Oeko-Institut has conducted fundamental research on the conditions and options for the development of environmental due diligence obligations in a range of projects.

Product responsibility – EU product standards must apply

Another approach which is intended to ensure that German law is applicable in transboundary supply chains relies on extended product responsibility in online trade. Under recent regulatory proposals, e-commerce platforms which offer overseas goods for sale in Germany will be responsible for ensuring that these goods comply with Germany's domestic legislation and regulations. It is a major problem: the OECD estimates that every year, more than 460,000 tonnes of electrical/electronic equipment are placed on the market in Europe via online platforms in violation of German and European rules. For example, the products may contain banned chemicals or the management of the associated waste (packaging and batteries) fails to meet legal requirements.

Given the vast quantity of goods involved, monitoring compliance with obligations is a major challenge. A plausible solution to this problem is to require operators of online marketplaces themselves to monitor compliance with obligations under the German Electrical and Electronic Equipment Act (Elektrogesetz), Batteries Act (Batteriegesetz) and Packing Act (Verpackungsgesetz). As these operators are responsible for distributing the goods, they have access to a large body of data on products, producers and importers.

In a project commissioned by the German Environment Agency (UBA) and in collaboration with Prof. Dr. Thomas Schomerus, the Oeko-Institut has developed a concept for a verification obligation for online platforms

[Product responsibility in e-commerce – regulatory options for the prevention of third country free-riders and of the destruction of returned goods: Input paper by the Oeko-Institut and Prof. Dr. Thomas Schomerus on behalf of the UBA](#)

Environmental liability – also for environmental damage beyond national borders

A further approach relates to transboundary liability law and is based on the recognition that breaches of environmental law and environmental due diligence obligations are often associated with rights violations and economic harm in other countries. Traditionally, liability law has mainly served as a private mechanism for obtaining compensation for loss and damage.

Environmental liability is often viewed as a consistent strategy for regulatory decentralisation. Here, environmental law is enforced by those who have suffered loss or damage as a result of breaches of the law, i.e. private individuals. A key objective is to ensure that citizens of third countries who have suffered harm due to the activities of German companies are able to pursue claims in German courts.

A notable example is the legal action brought by the Peruvian farmer Saúl Luciano Lliuya, who is suing the energy utility RWE – a major greenhouse gas emitter – for climate-related loss and damage in a German civil court. Environmental liability law reflects the transboundary nature and complexities of the damage in that locally available information can be presented by the injured parties themselves and is admissible in court.

Transnational liability may also have a preventive effect

Civil proceedings against environmental damage caused in other countries can help to uncover rights violations and risks which national authorities often miss, partly due to the transboundary dimension. Environmental liability can thus have a preventive and potentially global steering effect.

The genuine possibility that global corporations will be accountable for damage caused by their violation of environmental standards can bring about far-reaching behavioural change.

The possibility – confirmed, at least in principle, in an growing number of court rulings in Germany and abroad – that businesses may be held liable for the climate-related loss and damage they have caused may mean that shareholders and insurers will have to factor in the costs of these liability risks. Climate-intensive operations and investments may then become less attractive.

Project: International Corporate Liability for Environmental Harm

In a research project conducted with technical support from the German Environment Agency (UBA) and funded by the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection (BMUV) under the Environmental Research Plan, researchers from the Oeko-Institut and other legal experts are critically reviewing the regulatory structure of international liability law. Various important and topical questions relating to international environmental liability are addressed:

- regulations on private liability in international law,
- selected international environmental treaties,
- liability for transboundary damage under German civil law provisions,
- value chain regulation and environmental due diligence obligations.
- The project also focuses on specific key areas of environmental liability: **liability for climate damage, and** harm caused by geo-engineering.

The project's research findings will be published in an edited volume entitled Corporate Liability for Transboundary Environmental Harm – An International and Transnational Perspective in late 2022.

[Project: International Corporate Liability for Environmental Harm, by the Oeko-Institut and other partners on behalf of the UBA and BMU](#)

International Governance for Environmentally Sound Supply of Raw Materials (InGoRo)

Raw materials extraction often has significant impacts on the environment. On behalf of the German Environment Agency (UBA), researchers from the Oeko-Institut, Ecologic Institute and Project Consult GmbH assessed suitable governance instruments which can foster, establish and enforce global standards for environmentally sound raw materials extraction.

Within the project framework, the researchers analysed international treaties, customary law and non-binding international, European and national mechanisms. The research team then developed policy options and recommendations on this basis. Two technical workshops and an international conference were held and the legal experts also provided consultancy services.

[Project report: International Governance for Environmentally Sound Supply of Raw Materials – Policy Options and Recommendations, by the Oeko-Institut, Ecologic Institute and Project Consult GmbH on behalf of the UBA](#)

Further information

[Haftungsrechtlicher Rahmen von nachhaltiger Zertifizierung in textilen Lieferketten](#)

[A liability law framework for the sustainable certification of textile supply chains]: Report by the Oeko-Institut on behalf of the Federation of German Consumer Organisations (vzbv)

[Rechtsfragen im Kontext einer Lieferkettenregulierung](#)

[Legal issues in the context of supply chain regulation]: Factsheet by the Oeko-Institut on behalf of the German Environment Agency (UBA)

Contact

Dr. Peter Gailhofer

Senior Researcher
Environmental Law & Governance

Oeko-Institut e.V., Office Berlin

Phone: +49 30 405085-352

Mail: p.gailhofer@oeko.de

Andreas Hermann, LL.M.

Senior Researcher
Environmental Law & Governance

Oeko-Institut e.V., Office Darmstadt

Phone: +49 6151 8191-158

Mail: a.hermann@oeko.de

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