Interstate liability for climate change-related damage
Kosolapova, E.

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Summary

The present work titled ‘Interstate Liability for Climate Change-Related Damage’ assesses the suitability of the law of state responsibility for climate change litigation. The research question can be formulated as follows: can injunctive relief, i.e. a court order requiring a party to do – or to refrain from doing – something, provide an effective legal remedy for climate change-related damage within the framework of the law of state responsibility?

Chapter 1 sets the scientific background by describing the physics of climate change, including its causes, consequences, manifestations, and impacts on regions as well as on systems and sectors. It also addresses the main response strategies recommended by science, namely mitigation and adaptation. Chapter 2 sets the legal context by introducing the international climate regime governed by the 1992 United Nations Framework Convention on Climate Change, 1997 Kyoto Protocol (also KP, or the Protocol), and decisions taken by the COP and Conference of the Parties serving as Meeting of the Parties to the Kyoto Protocol (CMP). Chapter 3 identifies international liability regimes relevant to climate change-related damage. It distinguishes between state responsibility and state liability and outlines the various conceptual approaches to the latter based on: (1) the obligation to pay compensation; (2) the obligation to negotiate a redress settlement; (3) the obligation to ensure prompt, adequate, and effective compensation; and (4) the obligation to take response action. In the absence of interstate claims related to climate change, Chapter 4 turns to domestic litigation in order to identify some general principles of law which operate as barriers to a successful claim. It is argued that those legal principles could potentially cause obstacles to liability also at the interstate level. In dealing with liability for climate change-related damage in domestic courts, Chapter 4 analyses three groups of cases from a number of different jurisdictions: claims related to procedural injury; claims for compensation; and claims for injunctive and/or declaratory relief. Chapter 5 takes the analysis to an international level by applying the legal framework of the law of state responsibility to the climate change problem. It identifies the relevant primary obligations of states: international obligations on climate change mitigation; obligations on climate change adaptation; and the customary obligation to prevent significant transboundary harm. In determining the origins of state responsibility for breaches of the relevant obligations, four groups of states are distinguished in accordance with the principle of common but differentiated responsibilities and respective capabilities encapsulated in the UNFCCC: industrialized states party to the KP; countries in transition to a market economy (EITs); industrialized states not party to the KP; and developing states. Chapter 5 then proceeds to address the content and
the implementation of state responsibility for breaches of those obligations. Finally, Chapter 6 brings the analysis together by making some concluding remarks. It is concluded that the law of state responsibility can provide the legal framework for an interstate claim seeking injunctive relief on the basis of the obligation of cessation.