The Inadequacy of Traditional Foundations of International Responsibility in Addressing Environmental Harm

قصور الأسس التقليدية للمسؤولية الدولية أمام الضرر البيئي

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Abstract:

This study aims to examine the ability of traditional legal bases of international liability to assimilate various types of environmental damage, applying the theories of fault and illegal act to environmental liability. The objective is to demonstrate their effectiveness and efficiency in environmental protection, through a descriptive and analytical approach. The study finally concludes that the traditional legal bases of international liability are incapable to ensuring exhaustive coverage of environmental damage due to their specific nature.

Keywords: Fault Theory; illegal Act; Environmental damage; International Environmental Responsibility.

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Introduction

The legal basis of liability is the legal rule or theory that says someone is responsible for something and must pay for the damage that results. In terms of protecting the environment, this means that anyone who does something that hurts the environment is responsible and must fix the damage and make up for it. But the unique and complicated nature of environmental damage has made it harder to find a basis for international liability that can fully cover the many new and different types of harm that have come about as a result of advances in science and technology.

International liability for environmental damage has mostly been based on traditional foundations that are based on the general ideas of fault and unlawful act theories. According to these theories, anyone who hurts the environment by being careless or breaking the law has to pay for it. Even so, using these ideas as the basis for international environmental liability has been very hard and has run into a lot of problems.

So, the goal of this study is to look into whether traditional bases of international liability can be used for environmental damage. The goal is to see how well they work and whether they are enough to cover and deal with the specific types of environmental harm. It also wants to find out what the main problems are that could make it hard to carry out these plans and, as a result, make it harder to guarantee full compensation for environmental damage. This study's main research question is:

To what extent are the theories of fault and unlawful act capable of serving as the foundation for international liability for environmental damage?

To solve this problem, a descriptive-analytical approach was used. This included showing how both theories could be used to explain environmental harm and judging each one to show what makes them hard to use.

So, the study is split into two parts. The first part looks at how traditional ideas, like the theories of fault and unlawful act, can be used to talk about international responsibility for environmental damage. The second part talks about the different problems and issues that make it hard to apply these traditional ideas to international environmental responsibility.

Firstly. Application of Traditional Principles of International Responsibility to Environmental Harm

The theory of fault is the main basis for holding countries responsible for environmental damage. A different approach, the theory of the unlawful act, has been suggested because there has been a lot of criticism of this theory. Here is how both theories are shown:

1. The Theory of Fault as a Basis for International Environmental Responsibility

This idea is one of the first building blocks of international responsibility. The idea behind it is that a state can't be held responsible unless it has done something wrong that hurt someone else. This section starts by looking at how this theory can be

used to think about international responsibility for environmental damage. Then, it looks at how well it works.

1.1 Application of the Theory of Fault to International Responsibility for Environmental Harm

The Dutch lawyer Hugo Grotius brought the idea of fault into international law after it was first used in domestic law. The theory says that a state is only responsible for its actions on the international level if they hurt another state or its citizens. This mistake must be the fault of the ruler or governing body, since the state's fault is the same as that of its sovereign, who is legally the same person as the state.[1]

This crime may take the form of the state doing things on purpose to hurt other states or their citizens. On the other hand, it may show up in a bad way, like when someone doesn't do something they should have done.[2] People who support this theory have listed certain situations in which fault can be proven, such as:

- The sovereign (or head of state) not taking the necessary steps to stop these kinds of acts from happening.
- The sovereign's failure to take steps to punish those responsible for the behavior, which effectively allowed their actions and made the sovereign complicit in the acts that followed.[3]

In the context of international court decisions, this theory has been used in practice as a basis for assigning state responsibility in many cases, often based only on the presence of negligence or omission, without needing to prove fault in a subjective sense.[4] It has also been added to a number of draft rules of international law and international treaties[5].

It is especially useful when it comes to transboundary environmental damage, especially when private companies linked to the government move or store dangerous and radioactive waste. In these cases, the state is said to be negligent because it didn't take enough care to protect the environment or didn't hold the people responsible for the damage they caused while they were doing their jobs.

The theory also applies to damage to the environment caused by dumping oils and other pollutants into the ocean. In this case, fault is based on negligence, which means that the person who caused the leak must have failed to take reasonable steps to stop it.

So, the injured party has to prove that the responsible agent was at fault for the damage. If you don't do this, you won't be responsible and won't be able to get paid.

1.2 Evaluation of the Fault Theory as a Basis for International Liability for Environmental Damage

Many people have criticized the fault theory for not being a good basis for holding people responsible for harming the environment around the world. In this case, the main points that have been brought up are as follows:

- The fault theory doesn't work with the unique nature of environmental damage because it's hard to blame one person for it when the damage happens over time and is cumulative.

- Using fault-based liability rules could let the state get away with not being responsible, especially if the state follows all the rules and takes all the necessary safety precautions, but damage still happens. In this situation, a victim may not be able to get compensation because it is impossible to prove fault.
- Using fault-based liability in environmental cases often means that the person who was hurt doesn't get paid because it's very hard to prove negligence or fault, which is based on subjective rather than objective criteria. The claimant must show that the responsible party acted in a way that was not normal and that this behavior caused the damage. This makes the fault theory not good enough for dealing with environmental harm.
- The fault theory doesn't fit with modern scientific and technological advances, which have caused huge amounts of damage without being at fault in the traditional sense of the word. In these kinds of cases, experts need to step in. For example, radiation damage from nuclear activities often makes it hard for the claimant to get compensation because of all the problems that come up.[6]

2. The Theory of Unlawful Act as a Basis for International Environmental Liability

Because the fault theory has been heavily criticized and can't cover many types of environmental damage because it's hard to prove fault, a new theory has come up that is based on an objective rather than a subjective foundation. This theory is based on the idea that the state broke an international duty and now has to fix the damage that was done. Section One talks about how this theory can be used to deal with environmental damage, and Section Two looks at how well it works.

2.1 Application of the Theory of Unlawful Act to International Liability for Environmental Damage

The theory of unlawful act says that a state has broken one of its international obligations by doing something wrong or not doing something it should have done. These obligations come from international rules,[7] which can be treaty-based, customary, or general principles of international law. International liability is created for any breach of such an obligation, making the responsibility completely objective, no matter where the obligation came from or how the breach happened. As a result, someone who breaks an international obligation is automatically responsible for any harm they cause to others, even if they don't have to prove that they were at fault, negligent, reckless, or intended to do so.[8]

For this liability to arise, two elements must be present:

- Objective element: This is an internationally wrong act, which is defined as breaking a rule of international law. This requires that there be an international rule that applies and that someone breaks it.
- Subjective element: This means blaming the wrong act on a person or group of people that international law recognizes as being responsible (for example, a state or other international legal entity).[9]

The idea of an unlawful act has been used a lot in cases of environmental damage because there are many international obligations that, if broken, can lead to international environmental liability. There are many international agreements that protect the environment that show how this works. For example, the 1982 United Nations Convention on the Law of the Sea requires States Parties to take steps to stop or lessen pollution of the environment[10].

The 1985 Vienna Convention for the Protection of the Ozone Layer also requires States Parties to take appropriate steps to deal with human activities that change the ozone layer. This lets too much ultraviolet radiation reach the Earth's surface, which protects human health and the environment from harmful effects that are already happening or could happen[11].

The Basel Convention also says that countries can't send dangerous waste to countries that have said they won't accept it. If a country breaks this rule, it is responsible for the environment in other countries.[12]

It's important to remember that international treaties aren't the only things that create obligations to protect the environment. Customary international law also does. Breaking certain international customs is against the law and can lead to international environmental responsibility. For example, the usual rule says that a state can't use or let others use its land in a way that hurts another state's land by releasing smoke or gases. The same goes for the customary norm, which says that an upstream riparian state can't do things that pollute river waters or add chemicals from farming or energy production, as long as that pollution hurts the interests of the downstream riparian state.[13]

The theory of the unlawful act has also been used in many court cases about who is responsible for environmental damage. A well-known case is the one involving a metal smelting plant in Canada, where the United States asked for money to cover damages to people and property in Washington state caused by toxic fumes from the plant that were blown across the border by the wind. The ruling said that Canada was responsible for the damage caused by the plant's activities and told it to pay for it.[14]

2.2 Evaluation of the Theory of the Unlawful Act as a Basis for International Responsibility for Environmental Harm

Even though the theory of the unlawful act has received support in the context of international responsibility for environmental damage, changes in the economy and modern life have made it harder to keep it as a core principle. Here are some reasons why:

– Scientific and technological progress in many areas has brought about big changes, the most important of which is that actions, whether legal or illegal, can hurt people. This has made people less likely to rely on the idea that the unlawful act is the only reason for international responsibility and has led to the search for other ideas and principles.[15]

- The rise of damage caused by actions that are not against the law, like using nuclear energy peacefully, doing things in space, and moving hazardous waste legally, but still polluting.
- Environmental damage can happen because of a lot of different things that are hard to see right away but become clear over time. This makes it hard to link the damage to any one action, which shows how unique environmental damage is.

Secondly: Challenges in Applying Traditional Principles of International Responsibility to Environmental Damage

The recent rise of environmental issues and the fact that environmental damage is different from other types of harm have had a big effect on the rules of responsibility. This has made it hard to apply traditional principles to international responsibility for environmental damage.

1. The Specificity of Environmental Damage

The unique nature of environmental damage has made it hard to use traditional international responsibility principles, which have not been able to fully cover and deal with this kind of damage.

So, the first part of this discussion will define environmental damage, and the second part will talk about its main features that have made it hard to use traditional principles.

1.1 Definition of Environmental Damage

People have called damage to the environment many things, such as ecological damage, harm to natural resources, environmental pollution, disruption of ecological balance, and environmental disturbance. Even though they have different names, they all mean the same thing: a change in the quality and condition of the environment that makes it worse.[16]

Scholarly doctrine defines[17] environmental damage as any harm done to any part of the environment by human activity, whether it is physical or legal, or by natural causes. This harm is characterized by a disturbance of ecological balance, whether it comes from within the polluted environment or is brought into it.

It has also been defined as the harm that comes from a mix of natural and human activities that change the environment around a group of people, either directly or indirectly, putting them at risk of physical or financial harm, moral harm, or damage to other living or non-living things.[18]

Environmental damage is the damage that affects the environment itself, which can only be covered and repaired by reviving the environment and restoring it as it was before the environmental damage occurred, and the latter represents not only the reduction of the financial value of the environment, but also the reduction of the interests and financial values of customers and beneficiaries of the environment.

The United Nations Convention on the Law of the Sea also says that environmental damage is when people put substances or energy into the marine environment, including rivers, that are likely to cause harm, like harming living marine resources and organisms, putting people's health at risk, blocking marine

activities like fishing and other legal uses of the sea, making seawater less useful, and disrupting coastal amenities.[19]

Observations on the Definitions Provided**:**

- People or natural events, like wildfires, can damage the environment. People can also damage the environment by doing things like cutting down trees without permission. Natural forces can cause changes and damage, but they can't be held legally responsible. Only actions and interventions that are the result of human behavior can be held responsible. Most of the damage to the environment is caused by people, either on purpose, by accident, or because they don't know how to balance what they need to do to meet their growing needs and goals with protecting the environment and keeping it free of pollution. In other words, claims for compensation for environmental damage must come from an action taken by a person, whether they are a natural person or a legal person.
- There are two types of environmental damage: the first affects the environment itself, like damage to land, water, or air; the second affects people because they are exposed to the damaged environment, which is often called indirect or consequential damage.

So, environmental damage is when people do something that hurts the environment, either directly or indirectly, and hurts the things that live in it.

1.2 Characteristics of Environmental Damage

Environmental damage is different from other types of damage in some important ways, which is why it has been impossible to set up international environmental liability on traditional grounds. The following is a summary of these traits:

- Environmental damage is impersonal damage

Environmental damage is purely material damage that directly affects environmental resources. The environment itself is the primary victim of such damage, making environmental harm impersonal in nature, since the environment is not a legal person. The subject of the right that has been harmed is the elements of the environment, which cannot independently bring legal claims.

So, legal scholars make a distinction between environmental damage and the damage that happens as a result of it, which is often called secondary or reflexive harm. The first type of harm is direct damage to the natural environment, like soil, water, or air. The second type of harm is damage done to people, their property, or their assets through the affected environment. This means that someone else may have harmed the environment, which could then harm that person.[20]

The Corsica Island case is the most important legal example of the difference between environmental damage and damage that happens as a result of environmental harm. The case came about when an Italian company dumped toxic waste into the open sea near Corsica Island. This caused a lot of pollution in the ocean, which affected both the high seas and the island's own waters. This pollution messed up the area's natural fishing habits.[21]

In this case, marine pollution was used as an example of environmental damage because it was a real harm done to the marine environment. Consequential damage, on the other hand, was the damage that happened as a result of the primary damage, such as fishermen losing their jobs, coastal properties losing value, and tourism declining. These damages were personal in nature.

-Environmental Damage as Indirect Damage

Because many things and sources can cause environmental damage, it is often indirect. It doesn't have a direct or immediate link to the harmful act that caused it, which makes it hard to rely on a simple causal link. Scientific and technological progress is one of the most important causes. These changes have brought about new risks that make environmental problems worse, even though they have benefits, welfare, and development. The environment can't handle the huge amounts of waste and depletion of natural resources that have happened. This has thrown off the balance of ecological systems. Demographic pressures have also been shown to be a major factor in making environmental degradation more difficult. The arms race and the fact that wars happen all the time are also seen as things that hurt the environment.

Because these causes are so many and interact with each other, they will always cause harm to the environment.[22] This means that the responsible act cannot be seen as the direct and only natural result of the act.

Scholars also explain how environmental damage is indirect by saying that it first affects the natural environment and then affects people. This makes compensation difficult because it is linked to natural and environmental resources that cannot be owned by individuals.[23]

-Environmental Damage as Gradual and Cumulative

This kind of harm is also called cumulative damage. It doesn't happen right away; instead, it builds up over time after the damaging event. Because of the involvement of multiple intervening factors, as previously discussed, this delayed emergence makes it harder to find the responsible party and to prove the causal link between the environmental damage and its source. It also makes people worry about the damage getting worse, since new harms could happen after compensation has been given.[24]

-Environmental Damage as Diffuse Harm

Environmental damage is unique in that it crosses borders and has an unknown scope that spans both time and space. This kind of damage can go beyond the borders of one state and affect nearby or even faraway states. To deal with and lessen its effects, countries need to work together. Many international treaties and conferences have used this idea.

The Trail Smelter case, the Torrey Canyon oil spill, and nuclear reactor accidents like the meltdown of Reactor Unit Four at the Chernobyl nuclear power plant near Kyiv, which was then part of the Soviet Union, are all well-known examples of how environmental damage can happen in many places.[25]

2. Limitations of the Application of Traditional Principles to International Responsibility for Environmental Harm

There are a lot of problems and issues with using the theories of fault and unlawful act to protect the environment. Because of these problems, people are looking for other foundations that can fully cover environmental damage and make sure that those who are affected get fair compensation for their losses. Below are the most important of these challenges:

1. It is hard to figure out who is to blame for environmental damage because there are so many sources and factors that can cause it, and the damage often happens slowly and indirectly over a long period of time. Because of this, it is hard to point to a specific person or group as responsible for the damage, and it is also hard to figure out how much of the damage they caused or how much of the blame they should take. Natural factors also often cause damage, which makes it harder to figure out who is to blame.[26] This complexity is clear in cases of acid rain, transboundary air and marine pollution, and other situations where it's hard to figure out who is responsible, which could mean that the affected parties lose their rights.

2.Difficulties in defining the basic parts of environmental responsibility: If we want to set up international environmental responsibility based on the fault theory or the theory of unlawful act, we need to have all the important parts: fault or unlawful behavior, damage, and a link between the two. In the environment, though, these things face a lot of problems and challenges. The biggest ones are:

- Either the fault theory or the unlawful act theory is used to set up international environmental responsibility. Under the first, fault and negligence must be proven, which usually means looking at the personal element, which is not acceptable in international responsibility. Under the latter, proof of behavior that breaks a law is needed. This means that this framework might not hold people responsible for legal activities that harm the environment.

- Because transboundary environmental damage is so unique and often involves many overlapping factors that contribute to its occurrence, it can be hard to prove the causal link between fault or illegal behavior and the damage that results.

- The unique aspects of environmental damage that we talked about before make it clear that traditional legal principles are not enough to cover all situations.

3. Difficulty estimating environmental damage :

Estimating appropriate compensation for environmental damage caused is faced with the problem of determining the size of subsequent losses as a result of the overlapping of the causes that led to its occurrence and the difficulty of attributing it to a specific source.it is also difficult to determine the proportions of participation in liability, which makes it difficult to apply the general rules of liability to establish an obligation to repair the damage caused either by restoring the situation as it was before it occurred or by compensation for purely environmental damage of its own nature.

Conclusion:

This study has shown that traditional ideas about international responsibility don't work well when it comes to environmental damage. They don't cover all the different types of environmental harm that can happen. The study has come to the following conclusions and suggestions:

- It was first used, but establishing international liability based on the fault theory doesn't work because environmental damage is so different from other types of damage. This is because it depends on subjective criteria that require proof of fault or negligence and the establishment of a causal link between the fault and the resulting environmental harm. These are problems that often lead to the denial of rights and the avoidance of responsibility.
- Because the fault theory doesn't work for holding states responsible for environmental damage, people started to look at the theory of unlawful act instead. This theory says that states are responsible for breaking their obligations, even if they weren't at fault. But this theory has also not kept up with scientific and technological progress that has brought about new and dangerous risks. It still can't deal with environmental damage caused by legal activities.
- The unique features of environmental damage, like how it happens indirectly, how it has real cumulative effects, and how it affects a lot of places, have made it hard to use traditional rules of international liability to protect the environment. This has had a big impact on the push to adopt modern liability frameworks that are more objective, can deal with activities with high risks, and can handle the environmental damage that comes with technological progress. To protect the rights of victims and those who are responsible for the damage, these frameworks should be based on the idea of corrective justice.
- There are a number of problems with using traditional liability rules to environmental damage. These include the fact that environmental harm is unique, it's hard to find the people who are responsible, and it's hard to prove the key parts of liability.

Study Recommendations:

- Make rules for international liability that take into account the unique nature of environmental damage.
- Set up international environmental liability based on preventive principles, since it's hard to fix and pay for environmental damage after it happens, and work together more with other countries to stop and lessen environmental damage.
- Make special courts to deal with environmental disputes, since environmental harm is different from other types of harm.
- The establishment of international regulatory bodies that follow up the implementation of the provisions of international conventions on the environment and ensure the extent of compliance of their parties to them

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