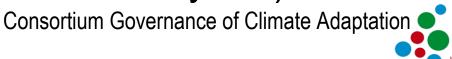
The Influence of Liability Law on Adaptation to Climate Change

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Outline

- Liability aspects
- "What is the influence of liability law on adaptation to climate change?"
- Resilience
- Two case studies
 - Dune reinforcement Noordwijk
 - Peat dykes (droughts)
- Two hypotheses
- Interviews and document studies
- Conclusions (on functions of liability law)



Dutch liability law

- Unlawful and lawful acting
- Liability for damages due to violating rules of conduct (unlawful)
- Also for not acting (unlawful passivity; not taking adequate adaptation measures)
- Liability for damages due to lawful acting (taking adequate adaptation measures)
- Compensation of loss ("nadeelcompensatie")

Functions of liability law

- Functions of liability law
 - Compensation
 - Prevention
- Assumption: 'fear' for liability
 - Avoiding damage and liability
 - Take any adaptation measures at all?
- Lack of empirical evidence

Hypothesis 1

 "The threat of liability for unlawful governmental behavior will stimulate governments in taking adequate adaptation measures, and will encourage them to investigate their (legal) responsibilities and act accordingly"

Hypothesis 2

• "The threat of liability for lawful governmental acting will encourage governments to investigate their (legal) responsibilities and their possibilities to avoid or minimize liability, which might restrain them from taking adequate adaptation measures"

- Dune reinforcement Noordwijk
- Safety objective and (economical) development objective
- Relocation, heightening and broadening of the dune
- Ambitious but successful project
- Transparency, public participation, public support, time frame

Unlawful behavior:

- Awareness of liability for flooding or water nuisance damages
- But a strong feeling of responsibility for public task
- Main stimulans for acting, not liability

Lawful acting:

- Also awareness of liability for lawful acting
- No influence on question whether to take any measures
- Influence on choice for concrete measures
- Accuracy and legal carefulness

- Peat dykes
- Collapse of a peat dyke in Wilnis (2003) due to long dry period
- Large amount of damage
- (Extreme) drought seemed to be of influence
- Large-scale problem
- New challenges in science and water management policy
- Measures with strong safety objectives

Unlawful behavior:

- When and where to start?
- Prioritization of measures
- Awareness of liability, but no direct connection to liability
- Feeling of responsibility for public task (safety) was main stimulans for acting

Lawful acting:

- Awareness of liability for lawful acting
- No influence on question whether to take any measures
- Measures of high/less priority → little/regular attendance to compensation of loss

Conclusions

- Falsification of hypotheses
- Threat of liability for unlawful behavior does not stimulate governments to take adaptation measures, but a feeling of legal responsibility to public tasks (safety) does
- Threat of liability for lawful acting does not restrain governments from taking adaptation measures
- It does influence the choice of measures (if there is enough time for a well-considered decision)
- It also encourages governments to take into account a (higher) level of accuracy and legal carefulness
- Influence is rather small in cases of emergency
- TO BE CONTINUED!

Questions?