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DOI

[10.1080/14693062.2022.2116382](https://doi.org/10.1080/14693062.2022.2116382)

Publication date

2022

Document Version

Final published version

Published in

Climate Policy

License

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Citation for published version (APA):

de Castro Dias, E., & Larriera Santurio, S. (2022). Human rights and the Warsaw International Mechanism: an interdisciplinary approach to overcome a financial gridlock. *Climate Policy*, 22(9-10), 1186-1198. <https://doi.org/10.1080/14693062.2022.2116382>

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Human rights and the Warsaw International Mechanism: an interdisciplinary approach to overcome a financial gridlock

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ABSTRACT

Climate change is a transdisciplinary *wicked* problem whose effects are causing widespread economic setbacks, jeopardizing fundamental human rights, and threatening people's lives and livelihoods. In addition to mitigation and adaptation, countries must frequently deal with another important aspect of climate change: loss and damage. Although losses and damages resulting from climate change have been increasing in the past years, countries continue to refrain from encompassing human rights in climate discussions and negotiations under the United Nations Framework Convention on Climate Change (UNFCCC). By neglecting a broader framework, nation states weaken the response to loss and damage through the Warsaw International Mechanism (WIM), in turn creating a gridlock in its finance scheme. Building on scholarly literature that sheds light on the necessity to encompass human rights as a response to loss and damage, this article explains how existing treaties and State obligations under international human rights law provide a base argument to overcome this gridlock and enhance the effectiveness of the WIM, without creating new obligations. Additionally, this article shows that a change in discourse may open an avenue to get funds to support the WIM. Rather than framing liability and compensation exclusively within climate law, States should bring a human rights rationale into climate talks, using existing obligations to comply with human rights treaties and to effectively respond to loss and damage.

Key policy insights:

- The WIM finance scheme is not fully operational because developed States avoid liability discussions, causing the current gridlock in climate talks.
- Many activities contribute to climate change and generate transboundary environmental impacts that limit the human rights of people outside of the territory where the impact originated.
- Developed countries are historically responsible for the majority of cumulative greenhouse gas emissions and have extraterritorial jurisdiction regarding human rights obligations. Consequently, they bear responsibility for losses and damages derived from climate change, which is caused by their emissions.
- An interdisciplinary approach in climate talks, which incorporates existing human rights obligations, has the potential to overcome the gridlock, enabling an operational finance channel within the WIM.

ARTICLE HISTORY

Received 20 March 2021
Accepted 18 August 2022

KEYWORDS

Climate change; loss and damage; human rights; Warsaw International Mechanism; human rights law

1. Introduction

Climate change is acknowledged as a *wicked* problem¹ caused by human activities that is influencing the increased power and frequency of rapid and slow onset events (IPCC, 2018). Current collective mitigation

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efforts have not restrained the increase in temperatures, which will likely negatively impact people's lives and livelihoods where adaptation measures are insufficient to avoid losses or damages deriving from such events (Broberg, 2020; Robinson et al., 2021; Toussaint, 2021).

Outlier rapid events have been taking place in different parts of the world. In 2020, hurricanes Eta and Iota each affected Central America and the Caribbean within just two weeks, in the 'busiest season ever recorded' in the Atlantic (OCHA, 2020, p. 1). A few years earlier, the South Pacific region was hit by cyclones Pam and Winston (Sopko & Falvey, 2015), respectively the strongest storm in the Southern Hemisphere and one of the most powerful tropical storms ever to form in the South Pacific east of Australia (Shultz et al., 2016). These outlier events, combined with slow onset events such as the sea-level rise, are particularly daunting for nations that are already vulnerable due to their geographic location, topography (Shultz et al., 2016) and economic underdevelopment (Wewerinke-Singh & Salili, 2020). This is the case for many of the Small Islands Developing States (SIDS) located in both regions, where such phenomena caused high economic and non-economic losses and damages (IDB, 2020; Wewerinke-Singh & Salili, 2020).

Although there is no official definition of Loss and Damage (L&D) under climate policy (IPCC, 2018), the UNFCCC secretariat states it as 'the actual and/or potential manifestation of impacts associated with climate change [...] that negatively affect human and natural systems' (UNFCCC, 2012, p. 3). Scholarship widely agrees that L&D refers to negative effects that are beyond adaptation (Burkett, 2016; Calliari et al., 2020; Warner, 2012).

The Alliance of Small Islands States (AOSIS), formed by countries with low affluence and high vulnerability, have been advocating for compensation for L&D associated with the impacts of climate change (Calliari et al., 2020), leading to the establishment of the Warsaw International Mechanism (WIM) in 2013 (UNFCCC, 2014). However, this mechanism has been in a financial gridlock since its establishment (Calliari et al., 2020; Robinson et al., 2021; Toussaint, 2021) due to an idea that providing financial resources to relieve losses and damages equates to an acceptance of responsibility and liability (Burkett, 2016; Calliari et al., 2020) and creates additional international obligations for developed countries.

Scholarship has proposed the adoption of a human rights-based approach to address L&D under the climate regime as a 'strategic tool for policymakers to strengthen the international response' to the impacts of climate change (Toussaint & Martinez Blanco, 2020). Building on this proposal, we argue that countries could use this approach to overcome the current financial gridlock at the WIM, turning it into an effective channel to address L&D derived from climate change.

We focus on existing obligations to fulfil and protect rights imposed by the core human rights treaties and provide a justification to enable their extraterritorial applicability based on King's (2009) factual theory of jurisdiction and Baatz's (2013) Beneficiary Pays Principle. We further support our arguments with recent developments in human rights bodies.

The remainder of the article then provides a historical overview of the creation of the WIM in Section 2 and analyses its current financial gridlock in Section 3. The specific rights affected by the transboundary effects of climate change and State's obligations under human rights law are outlined in Section 4, followed by an assessment of the *de facto* acknowledgement of human rights during climate talks in UNFCCC in Section 5. Finally, Section 6 provides a justification for an interdisciplinary approach as a way forward and Section 7 concludes by demonstrating that a human rights-based approach can help to strengthen the WIM.

2. The creation of the Warsaw International Mechanism

Since the early 1990s, the AOSIS, formed by most of the SIDS (Shultz et al., 2016), has been jostling in international climate negotiations to establish an international fund and insurance pool to compensate for losses and damages derived from sea level rise (AOSIS, 1991; AOSIS, 2007; Calliari et al., 2021; Pekkarinen et al., 2019). Although the proposal was not approved by developed States, the term 'insurance' was included in the convention and later in the Kyoto Protocol (Wewerinke-Singh & Salili, 2020). However, an official reference

¹The concept of *wicked problem* is embedded with notions of social-ecological complexities and uncertainties. First identified by Rittel and Webber, wicked problems are technically challenging, full of uncertainties regarding causes, impacts and solutions, and involve many stakeholders with different perspectives (Rayner, 2012; Head, 2008; FitzGibbon & Mensah, 2012).

to loss and damage only appeared years later in the Bali Action Plan (UNFCCC, 2007), since countries perceived it as part of the adaptation regime (Burkett, 2016). Afterwards, the term became detached from adaptation, appearing in several COP decisions (Wewerinke-Singh & Salili, 2020). Hence, the AOSIS had a leading role in the acceptance of the term 'Loss and Damage', particularly in the Article 8 of the Paris Agreement and the establishment of the WIM in 2013 (UNFCCC, 2016; Wewerinke-Singh & Salili, 2020).

The core functions of this newly created mechanism are three-fold: to enhance knowledge generation; facilitate coordination, dialogue and synergies; and enhance action and support to tackle loss and damage, including finance, technology and capacity-building (Calliari et al., 2020; UNFCCC, 2013; UNFCCC, 2020). Despite the implementation of the mechanism, L&D remains ambiguous due to the absence of any reference to either 'liability' or 'compensation' (Pekkarinen et al., 2019; Roberts & Huq, 2015). Scholarship outlines this ambiguity as the main reason for developed States to agree with the mechanism (Vanhala & Hestbaek, 2016; Wewerinke-Singh & Salili, 2020).

Although the inclusion of this topic seems to have represented a big step in climate discussions, concrete actions are yet to take place. During the negotiations, many developed countries saw L&D as a topic that should not be discussed amid the Paris Agreement and were concerned that the inclusion of Article 8 would result in liability for them (Burkett, 2016). As a result, paragraph 51 of Decision 1/CP.21 explicitly states: 'Article 8 of the agreement does not involve or provide a basis for any liability or compensation' (UNFCCC, 2016, para. 51), excluding legal responsibility. Also, Article 8 lacks an explicit link to the financial mechanism of the convention (i.e. Green Climate Fund), which hinders the strength and full applicability of the provision (Pekkarinen et al., 2019; Wewerinke-Singh & Salili, 2020).

This disagreement over liability and compensation obligations has led to financial gridlock and halted negotiations on this question (Calliari et al., 2020; Pekkarinen et al., 2019). Although L&D was successfully included in the Paris Agreement, effective financial measures are yet to be seen (Burkett, 2016).

3. The financial gridlock

The aforementioned paragraph 51 of Decision 1/CP.21 offers an insight into the ongoing impasse between developed and developing States in climate summits that predates the WIM and the Paris Agreement. Vulnerable countries have been arguing that L&D is a concept beyond adaptation, which requires its finance scheme and set of policies (Roberts & Huq, 2015). To unlock political will from developed States, any link to 'liability' or 'compensation' was excluded (Vanhala & Hestbaek, 2016; Wewerinke & Salili, 2020). Hence, after negotiations, Parties agreed to the text of paragraph 51. Although the Paris Agreement avoids establishing liability and compensation obligations or mentioning L&D in the 'finance' section, Article 8 acknowledges L&D and leaves open the possibility of assigning legal responsibility under the international climate regime (Lees, 2017; Wewerinke-Singh & Salili, 2020).

Despite initial enthusiasm due to the inclusion of L&D as a specific article, some vulnerable States became considerably disappointed with the lack of provision of financial resources (Wewerinke-Singh & Salili, 2020) and the absence of obligations to refer to L&D in countries' (Intended) Nationally Determined Contributions ((I)NDC). In 2018 the Paris rulebook included L&D in its transparency framework and the global stocktake guidance but failed to separate L&D from adaptation (Pekkarinen et al., 2019), and the absolute lack of provisions about funding remained.

As a result of this absence, developed countries did not address this topic in their INDCs and only 28% of all countries mentioned the issue of L&D (Kreienkamp & Vanhala, 2017), with the majority referring to their economic losses and damages. For instance, Antigua and Barbuda estimates that between 1995 and 2010 six hurricanes resulted in devastation on the twin island State amounting to US\$335 million (Antigua and Barbuda, 2015). India predicts an economic setback of 1.8% in its GDP annually by 2050 due to losses and damages resulting from the impacts of climate change (India, 2015).

Even though supporting and financing measures to address L&D are explicitly outlined in the core of the WIM, the 5-year workplan posited by the WIM's Executive Committee approved in 2016 at COP 22 failed to outline any new sources of financing. This has curbed the ability of States to carry out concrete actions to address L&D (Gewirtzman et al., 2018; Pekkarinen et al., 2019). Additionally, the WIM has no decision-making

authority, being subordinated to the COP. Thus the mechanism operates *de facto* as a technical body, hampered to act fully and effectively (Pekkarinen et al., 2019), as shown in Figure 1.

The gridlock has prevented the WIM from fulfilling its goals, hindering the ability of countries that are most impacted by climate change to quickly and effectively address urgent and ongoing issues. This is a result of the lack of agreement between developing and developed countries (Pekkarinen et al., 2019). Therefore, the limited operation of the WIM underscores the secondary role of L&D in the policy agenda. With this, these most affected countries are left to deal on their own with a problem caused by others.

4. Climate change and human rights: global impact and State obligations under international human rights law

The environment is composed of different and interconnected ecosystems across the globe, forming a unique transboundary Earth system. Thus, actions that jeopardize the environment carried out within the territory of one State, will potentially generate distant, transboundary impacts (Althor et al., 2016). Yet, politics typically focus governance efforts on a national scale; transnational multi-scale governance of climate risks rarely takes place in the international arena (Benzie & Persson, 2019; Blumstein et al., 2016).

Climate change first emerged as an issue to be addressed by the international community in the mid-1980s, but it was mainly seen as an environmental, economic, or scientific problem to be discussed through inter-state negotiations (Bodansky, 2009). However, now it is widely accepted that 'weather-related disasters have obvious implications for the realization of fundamental rights' (Peel & Osofsky, 2018). It is also recognized that current levels of mitigation and adaptation action will not suffice to prevent the harmful impacts of climate change in people's lives and livelihoods (Toussaint & Martinez Blanco, 2020).

The linkage between human rights and climate change has begun to gain attention in academia and civil society (Mayer, 2016), showing how climate change severely affects individuals' health and livelihoods and has a major impact on the enjoyment of human rights across the globe. International entities followed the same path only recently. From 2008 onwards, the UN Human Rights Council (HRC) adopted resolutions acknowledging the connection between human rights and climate change (Mayer, 2016; Peel & Osofsky, 2018). In 2018,

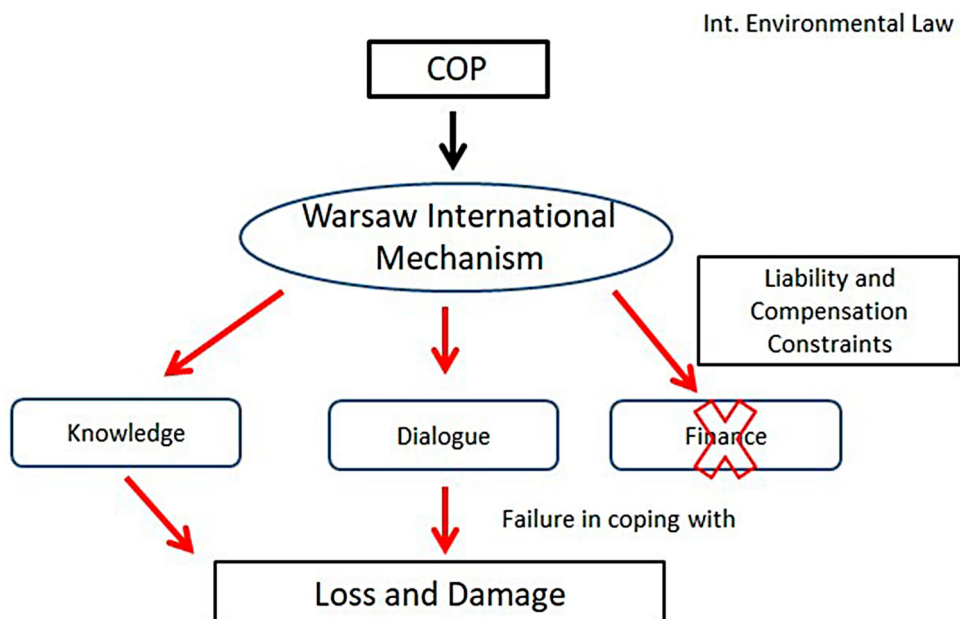


Figure 1. The gridlock in the WIM to address loss and damage exclusively within the international environmental law framework due to the existence of constraints.

the HRC adopted the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment (Special Rapporteur on Human Rights and the Environment) which stated that 'a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of a vast range of human rights' (Knox, 2018, para. 2).

Although the core international human rights treaties do not contain a specific right to a safe and healthy environment (Peel & Osofsky, 2018), the impacts of climate change may affect several rights guaranteed in the treaties, including (but not limited to) the right to life, health, food, adequate standard of living, and self-determination (Boyd, 2019). All these rights are intrinsically linked with a safe and healthy environment and, therefore, are compromised by climate change (Peel & Osofsky, 2018).

Within climate law, the connection between human rights and climate change was first made in 2010, with the inclusion of language referring to human rights in the Cancun Agreements (UNFCCC, 2011). This can be mainly attributed to civil society organizations, who continued to exert pressure and called for the inclusion of human rights into the Paris Agreement (Mayer, 2016).

More recently, the UN Human Rights Committee (UNCCPR) clarified that climate change and environment degradation are amongst the most severe and urgent threats to the enjoyment of the right to life (UNCCPR, 2019a, para. 62) and States have the obligation to address such issues. The same approach was also followed in the case *Portillo Cáceres v Paraguay* in which the Committee explicitly recognized that a State may violate its obligations under the Covenant, particularly the right to life, if it fails to act against environmental damage (UNCCPR, 2019b, para. 7.3).

5. Human rights in the UNFCCC: need for an interdisciplinary approach

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights. (UNFCCC, 2016, preamble)

Since Decision 1/CP.16, the COP under the UNFCCC acknowledges the relevance and embeddedness of human rights in their agreements (OHCHR, 2020). However, Parties have failed to hold substantive discussions about ensuring, protecting, and fulfilling human rights (Toussaint & Martinez Blanco, 2020). Either by *pragmatic omission* (i.e. when the topic is not introduced to not add complexity) or *principle omission* (i.e. when the topic is avoided to eschew duties and responsibilities), countries typically omit substantive reference to human rights in climate discussions (Fleming, 2015; Wallbott, 2014).

Overall, the discussions in the UNFCCC use human rights in a mere rhetorical stance (Toussaint & Martinez Blanco, 2020) and are *de facto* restricted to international environmental law. This is due to a general view that human rights are a sensitive topic with the potential to augment the complexity in negotiations (Fleming, 2015; Wallbott, 2014). Thus human rights appear only as an abstract framework, *pro forma*, without actually being included in the debates.

However, avoiding real involvement in other fields of international law does not release States from their obligations. Scholarship highlights the obligation to anchor international climate discussions in human rights law (Atapattu, 2009) and indicates the need for a human rights-based approach to substantively integrate human rights into the climate regime to advance policy talks on L&D (Toussaint & Martinez Blanco, 2020). For instance, there are obligations under customary international law, such as the no-harm principle in which a State is accountable for any transboundary harm provoked by activity inside its border under its control (Rajamani et al., 2021). This holistic approach is supported by the UN Office of the High Commissioner of Human Rights (OHCHR), which asserted that 'States are required to provide effective mechanisms to prevent and redress human rights harms resulting from the adverse effects of climate change' (OHCHR, 2018, para. 48).

Moreover, the direct link between human rights law and the impacts of climate change cannot be ignored. Monetizable impacts of losses and damages as well as the intangible non-economic losses continue to have direct consequences on several rights guaranteed by the core human rights treaties as indicated in Section 4. L&D is not being currently well-addressed by WIM's third channel. The WIM provides 'little to nothing in terms of action and support to protect people in harm's way' and, so far, 'has not disbursed any funds' to address losses and damages (Toussaint, 2021, p. 17), operating *de facto* as a 'lower-level technical process'

(Pekkarinen et al., 2019, p. 38). Hence, it is imperative for this problem of L&D to exceed solely the scope of climate law; there is a need to broaden the analysis to include other fields of international law as a way forward.

6- An interdisciplinary approach as a way forward: the role of human rights in advancing climate discussions

6.1. A human rights rationale to L&D

As noted, the impacts of climate change are becoming more frequent and powerful, severely affecting populations in different parts of the world and hindering human rights. The impacts of human-induced climate change due to the accumulation of greenhouse gases (GHG) in the atmosphere, and its link to weather events, are more and more evident (Robinson & Carlson, 2021). These impacts are ‘not constrained within the border of the emitting country’, leading to a ‘global mismatch between greenhouse gas emissions and the burden of climate change’ (Althor et al., 2016).

The case of SIDS offers a clear example of this global mismatch. While developed countries have disproportionately contributed to historical GHG emissions (Robinson & Carlson, 2021), SIDS ‘have only made small contributions to climate change’ (Behlert et al., 2020, p. 55) and are particularly vulnerable to it (Althor et al., 2016). The Pacific Island of Vanuatu, for example, has suffered large-scale and devastating economic and non-economic losses due to extreme weather events, and future losses and damages will far exceed their coping capacities (Wewerinke-Singh & Salili, 2020). Similarly, the Caribbean SIDS were hit by the costliest North Atlantic hurricane season in 2017. While these extreme events also affected the USA, the experience and the extent of losses and damages in the Caribbean SIDS are far more devastating given their physical and human geography, high exposure and sensitivity combined with low adaptive capacity to respond to such events (Robinson & Carlson, 2021). Therefore, these most affected countries had – and will continue to have – significant non-economic and economic losses that are caused by a problem to which they did not contribute to.

The notion of historical contribution based on the historical GHG emission tries to attribute to each country their fair share of responsibility (Global Policy Watch, 2019; Rajamani et al., 2021). In such approaches, the responsibility for the global GHG emissions is mainly attributed to developed and wealthy countries such as the US and the EU Member States (Robinson & Carlson, 2021; Rocha et al., 2015), who have disproportionately contributed to the climate crisis (Boyd, 2019). The Special Rapporteur on Human Rights and the Environment agrees that developed countries are the most responsible for GHG emissions. He highlights that this has ‘important ramifications for the human rights obligations’ of such States which must not only immediately reduce emissions, but also ‘pay the lion’s share of the costs to assist developing States’ in coping with the effects of climate change (Boyd, 2019, para. 14).

Scholars argue that either for emitting GHG or for benefiting from these emissions, the developed and wealthy countries are the most responsible for climate change and should, therefore, compensate the vulnerable underdeveloped countries (Baatz, 2013; Elliott et al., 2012; Mayer, 2014; Robinson & Carlson, 2021). Instead of focusing on accountability for past emissions, Baatz’s (2013) Beneficiary Pays Principle places the burden to pay on those who ‘have (undeservedly) benefited from a harmful action’ (Baatz, 2013, p. 98). The core point of this theory is the redistribution of these undeserved benefits, giving a positive perspective rather than trying to rectify or punish past actions.

Next to Baatz’s (2013) Beneficiary Pays Principle, King’s (2009) factual theory of jurisdiction in human rights law is also relevant for the present article. Human rights obligations can only arise if a State has jurisdiction over a person. Based on King’s legal theory, the relationship between an individual and a State may arise from ‘a particular cause and effect notion’ (King, 2009, p. 551). Thus, acts of a State that violate human rights bring the affected person within the jurisdiction of that State and trigger its human rights obligations.

Building on both theories, we argue that when it comes to the effects of climate change on the enjoyment of human rights, developed States are not only required to respect the human rights of individuals within their territory and subject to their jurisdiction. Developed States also have extraterritorial human rights obligations towards individuals who are affected by climate change consequences caused by their historical high-level GHG emissions and the related benefits.

A recent Advisory Opinion on Human Rights and the Environment issued by the Inter-American Court of Human Rights (IACtHR) acknowledged that many environmental issues entail transboundary damage. Thus, the IACtHR found that a person whose human rights have been violated by transboundary environmental damage is understood as being under the jurisdiction of the State where the ‘activity that caused environmental damage originated, could originate, or was implemented’ (IACtHR, 2017, para. 101, footnote 195). The IACtHR further explained:

In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage. (IACtHR, 2017 para. 102)

Therefore, considering the transboundary effects of climate change, we posit that the right to a healthy environment and all the correlated rights do not necessarily have a territorial link and, thus, have universal application. With this, we argue that human rights obligations arising from climate change effects are universal and have extraterritorial applicability.

It is also well established that States’ obligations under human rights law follow the tripartite typology of *respect, protect, and fulfil* human rights, and also entail positive and negative obligations (Scheinin, 2013). Thus a factual theory of jurisdiction also leads to an extraterritorial obligation, where States have negative obligations towards the affected population insofar as they must ‘refrain from interfering with people’s rights’ (King, 2009, p. 552).

Based on this premise, we argue that developed States already have human rights’ negative obligations in place and are obliged to refrain from violating human rights, whether within their territory or abroad. However, industrialized States such as the US and EU member States, who are historically the biggest GHG emitters and beneficiaries, affecting the environment in drastic and irreversible ways, have failed to comply with their existing obligations in this arena. A failure in their obligation to comply leads to a responsibility to compensate. In the words of the Special Rapporteur, they must ‘pay the lion’s share of the costs to assist developing States’ by compensating those who are suffering the effects of climate change.

6.2 Applying the human rights rationale to the WIM

As alerted by the Intergovernmental Panel on Climate Change (IPCC) in its 2018 Special Report, extreme events deriving from climate change are already causing severe damage, ‘affecting people, ecosystems and livelihoods all around the world’ (IPCC, 2018, p. v). The increase of 1°C above pre-industrial period temperatures is already generating impacts in different parts of the globe (IPCC, 2018). Further, countries’ NDCs put the world on a path for an increase of 3°C or higher (UNEP, 2019). This means ‘the prospects of more frequent and more severe climate losses and damages appear inevitable’ (Toussaint, 2021, p. 17). Thus, quick steps are needed to tackle specific issues within L&D.

The WIM was envisaged to address L&D associated with impacts of climate change, yet, as observed, several hurdles are hindering its proper development and operationalization. Building on Toussaint & Blanco’s (2020) human rights-based approach, we propose to expand the framing of the L&D problem, changing the classic discourse, which has been strictly focused on environmental law (Wallbott, 2014), to an interdisciplinary one, which *de facto* embraces other branches of international law, particularly international human rights law. International human rights law is a very robust body of law with several treaties as pillars, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. Both covenants were widely ratified by most countries that are also Parties to the UNFCCC (UNTC, 2021a, 2021b, 2021c) and, therefore, are bound to respect, protect, and fulfil the rights and freedoms asserted by both sets of international instruments.

Given the impacts of climate change on people’s lives, a clear connection can be made between such impacts and political, social, and civil liberties, leading to the conclusion that fundamental, long-established

human rights are being violated. For this reason, international human rights institutions and bodies, such as the OHCHR and the HRC, have been very vocal about their concerns regarding the effects of climate change on basic human rights and started to assume a prominent role in the discussion.

The active role of human rights bodies can be observed, for example, in the OHCHR statement mentioned before, in which the High Commissioner highlighted that, according to the ICCPR and other human rights instruments, '[S]tates are required to provide effective mechanisms to prevent and redress human rights harms resulting from the adverse effects of climate change' (OHCHR, 2018, para. 48). This statement reflects a candid call for action by the OHCHR towards the Parties to the ICCPR, most of which are also Parties to the UNFCCC.

Furthermore, a human rights rationale acknowledges the intersectionality required to deal with climate change and appears as a democratizing tool holding countries accountable for their climate actions – something that they are actively refraining from in climate discussions. This holistic approach also can give voice to the less empowered whilst shaping further climate policies, bringing the binding nature of human rights law in the discussion within the climate arena (Toussaint & Martinez Blanco, 2020).

While climate negotiations continue to *de facto* disregard human rights, climate change is inexorably embedded in other branches of international law and is being actively discussed by human rights actors. It does not matter if environmental policymakers consider human rights debates too sensitive to bring to the discussion table because in the human rights field the debates are ongoing. A clear example of this ongoing parallel debate is the active role of national, regional, and international courts pushed by the increasing number of adjudications related to L&D caused by climate change effects (Pekkarinen et al., 2019; Robinson & Carlson, 2021; Toussaint, 2021; Wewerinke-Singh & Salili, 2020; Wewerinke-Singh & Van Geelen, 2018). Strategic litigation in the field of climate change is spreading and gaining relevance as an instrument to steer policy outcomes, changing behaviour and strengthening climate action (Setzer & Byrnes, 2019; Toussaint, 2021). Other non-judicial methods to address losses and damages and achieve climate justice have been proposed elsewhere (Robinson & Carlson, 2021). However, such alternatives alone are not 'an ideal strategy to address loss and damage' and do not replace 'a comprehensive and enforceable multilateral agreement on the issue' (Wewerinke-Singh & Salili, 2020).

Acknowledging that climate change is an intertwined phenomenon of climate and human rights law, we argue that an interdisciplinary approach to effectively embrace human rights into the UNFCCC, broadening the frame of the discourse, could serve as an efficient tool to surpass the WIM's finance gridlock, strengthening the mechanism as a whole and making it fully operative.

The concept behind this normative plea is that financial resources from developed countries should be provided based on the requirement to comply with already existing human rights obligations under international human rights law due to their high level of historical GHG emissions. As shown before, most of the relevant UNFCCC members are parties to international human rights covenants. As argued in Section 4, States causing climate change bear these obligations to protect human rights whether they acknowledge that in climate negotiations or not, meaning 'governments do not check their human rights obligations at the door when they respond to climate change' (Knox, 2015).

Therefore, in an interdisciplinary approach, the UNFCCC could follow the OHCHR guidelines, which state: 'human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change' (OHCHR, 2018, para. 37).

We posit that there is no need to create another tool to address the human rights implications of climate change. As shown in Sections 3 and 4, there is already a relevant mechanism in place. The WIM is designed to enhance knowledge, facilitate dialogue, and support actions to overcome and mitigate the adverse consequences of climate change and efficiently address L&D. These fundamental characteristics open a possibility to turn the WIM into a relevant mechanism to be used under this new perspective to tackle human rights violations resulting from climate change impacts. As illustrated in [Figure 2](#), by using the already established WIM coupled with the inexorable acknowledgement of the role of human rights in the discussion, the current gridlock could be surpassed.

The financing of the WIM, as explained above, could be embedded in the necessity to redress human rights harms resulting from climate change effects. The OHCHR has outlined that 'States must establish one or more

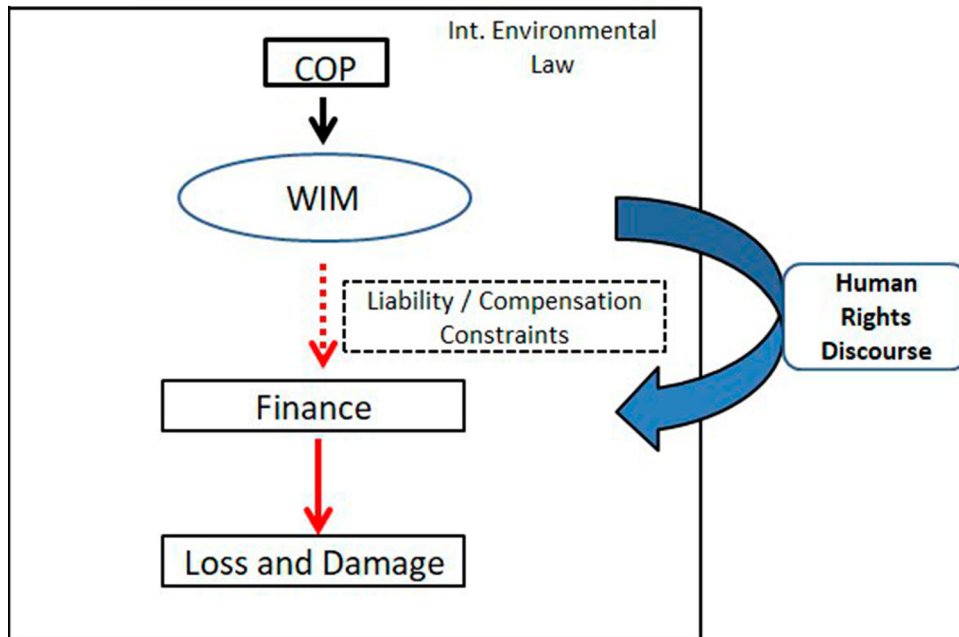


Figure 2. A holistic view to surpass the financial gridlock, framing the problem encompassing the human rights perspective as a way to avoid discussions about liability and compensation to strengthen the WIM to address loss and damage.

new financing mechanisms that generate revenue to fund payments for loss and damage suffered by vulnerable developing countries, such as small island developing States, because of climate change’ (OHCHR, 2018, para. 48). Similarly, the UN Special Rapporteur on human rights and the environment opened the discussion in the UN General Assembly; he stated that ‘[f]inancing for loss and damage could be provided through an air travel levy, a levy on fuels used by the aviation and shipping industries, or a climate damages levy on the revenues of fossil fuel companies’ (Boyd, 2019, para. 92), which opens a wide range of possibilities to get funds.

Overall, this article advocates for an approach that could be easily integrated, since the main modification needed is a change in the discourse, enlarging the framework and recognizing the important role of the human rights regime to overcome current barriers in negotiations regarding L&D. The justification presented in this article could, for instance, be used by the AOSIS and other vulnerable and affected countries to push developed countries, in climate negotiations, to accept their fair share of responsibility and liability for losses and damages and, consequently, providing compensation for it.

This new framing does not create new obligations or intend to blame a particular State for specific climate events. Human rights obligations are already well established by international covenants and customary international law. They are acknowledged by States, particularly the most developed ones, which are obliged to respect, protect, and fulfil them. The suggested interdisciplinary approach would merely take those already existing obligations and positively incorporate them into the climate discussions, specifically those related to the WIM and its financial channel.

Shedding light on the fact that binding human rights obligations already exist weakens the argument that L&D would create new obligations for developed States. Rather, this would force them to justify why they are not complying with their existing human rights obligations. The most affected countries could use this discourse to advance the discussions around the financing channel of the WIM, demonstrating that developed States already have the obligation to provide compensation for L&D.

7. Conclusion

Climate change impacts communities and people all over the world with the rise in the number and severity of extreme events. Discussions under climate law have acknowledged that some of these impacts are beyond adaptation and are directly affecting human rights. Following this, international climate law is evolving to address these impacts with the creation of the concept of L&D and the WIM.

Despite this, a financial gridlock has arisen, hampering climate change negotiations and effective measures. Developed countries refuse to discuss liability or compensation for historical GHG emissions fearing the creation of additional obligations for themselves. However, the vast majority of Parties of the UNFCCC are signatories of legally binding, international human rights covenants, which already impose obligations to respect, protect, and fulfil human rights.

Policymakers should incorporate pre-existing international human rights obligations into climate policy discussions to open a new avenue to try to overcome the financial gridlock around the WIM. We argue for an interdisciplinary view of the problem based on a factual theory of jurisdiction and the Beneficiary Pays Principle, to push developed States to improve cooperation through climate summits and by disbursing funds to the third channel of the WIM.

In summary, this article shows how a human rights-based approach can help to strengthen the WIM to become an operational finance channel, to address both economic and non-economic losses provoked by climate-related events. We present a way to frame climate change discussion on L&D more broadly, recognizing that these discussions have to be embraced by international law as a whole.

This change in the discourse is not a panacea that will automatically lead to millions of euros flowing into the WIM's finance channel. The increased need for climate litigation shows that developed States are generally reluctant to accept their responsibility and pay compensation for L&D. More research is needed to identify how developed States can be incentivized to pay. However, a simple change in the dominant discourse might significantly help to develop climate talks. Together, climate law and human rights law can provide instruments and guidance to thrust States to act and to meet their *binding obligations* towards the most vulnerable.

Acknowledgements

The authors would like to express their gratitude to the reviewers and the editor for all the valuable comments and suggestions provided, which significantly helped to improve the quality of the manuscript. The authors also thank Dr. Ingrid Boas and Dr. Jason T. P. Rudall for their valuable comments and insights on earlier versions of this paper. Finally, the authors thank Dr. Paula Nunes Mamede Rosa, Clive Baldwin, Hannah Elizabeth Lifszyc and Winston Lofton for their insights, careful proofread and relevant contributions.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

The authors did not receive support from any organization for the submitted work.

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