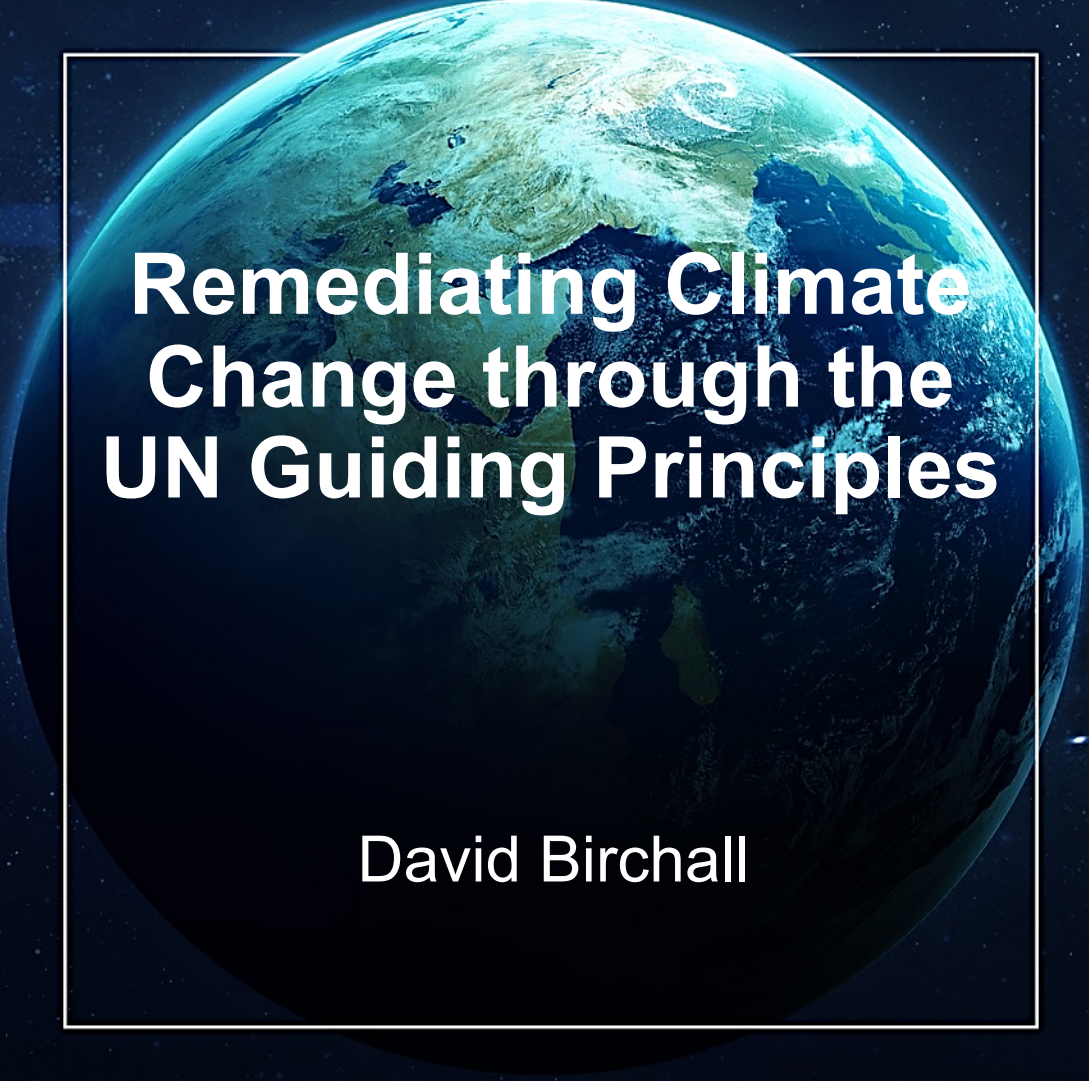




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A large, high-resolution image of the Earth as seen from space, showing the Western Hemisphere with North and South America. The Earth is framed by a thin white rectangular border. The background is a deep blue space filled with numerous small white stars.

Remediating Climate Change through the UN Guiding Principles

David Birchall



Problem: Large-Scale Impacts

- Business actors are capable of causing severe harm to human rights through acts that do not constitute justiciable violations.
- Business acts that cause climate change is one major example, others are apparent in housing investments, commodity trading, and tax planning.
- These are termed 'large-scale impacts' because they result from macro-level planning decisions and can affect a broad range of individuals globally.
- While inroads to justiciability are being created, justiciability alone is unlikely to comprehensively address climate change and other impacts that occur at a large-scale.
- Victim-violator gap.



Problem: Large-Scale Impacts

- Large-scale impacts often result from legally-permitted, deeply embedded behaviour, and may be unavoidable or have unpredictable results.
- Because large-scale impacts have multiple contributors and disparate victims, no traditional remedial forum can address the case. The UNGPs do not provide any concrete ideas to address this problem.



Climate Change

- Business actors physically contribute to climate change more than any other actors. They also evade state regulations and disincentivize consumer awareness. Climate change causes significant reductions in human rights enjoyment, including losing lives and livelihoods.
- Climate change exemplifies a large-scale impact on victims because they are spread around the world, and because different groups will experience different impacts, from submerged island homes to drought.



- ‘Impacts’ – an act that ‘removes or reduces an individual’s enjoyment of his or her human rights’
- ‘Cause, Contribute, Linked to’ – Businesses owe remedial responsibility when they cause or contribute to an impact. Contribute means either a quantitative contribution to a larger impact (e.g. pollution causing an impact) or having a role in an impact (e.g. banks lending to a human rights violating company).
- Under the UNGPs, if a business contributes to an impact it owes remedial responsibility.



Linkages Between Pillars 2 and 3

- The problem of large-scale impacts is that there is no proper means by which to account for their remedy. The UNGPs framework under pillar 2 is inclusive and establishes a comprehensive set of accountability standards. Pillar 3, however, fails to offer effective remedy for the scope of ‘impacts’ under pillar 2.
- Remedy under pillar 3 is relational: it provides for remedial fora where specific companies have wronged specific groups, based on criminal/tort methods, and expands into non-legal variants, e.g. operational-level grievance mechanisms. Although some options under pillar 3 could in theory cover climate change (e.g. Filipino HRI) they are soft and unrealized.



Proposal

- A trust fund for victims under UNGPs Pillar 3.
- This allow for all impacts that cannot be directly remediated by one company to be remediated instead by the trust fund.
- One version would be to disaggregate funds, for example, establishing a climate change fund to be paid by major polluters to remedy climate change harms.
- Another version would be a comprehensive fund paid for by all large companies with possible offsets for good behaviours, allowing for all such impacts to be remediated as they occur.



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A background image of the Earth from space, showing the curvature of the planet and the glowing blue atmosphere. The continent of Europe is visible, illuminated by city lights. The sky is dark with many stars.

Thank you!