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Loss and Damage Associated with the Effects of Climate Change: Recent Developments

Repeated scientific assessments have concluded, with increased confidence over time, that greenhouse gas (GHG) emissions associated with human activities have led to rising global temperatures and other changes to the climate. Small changes to the climate may bring benefits to some entities and adverse effects to others. Ongoing climate change would be increasingly adverse, and potentially catastrophic, for a widening scope of populations and ecosystems. Both slow onset changes (e.g., desertification) and extreme events contribute to an array of losses and damages.

Many low-income countries, especially small island states, have long sought assistance and recourse through the United Nations Framework Convention on Climate Change (UNFCCC, 1992) and its subsidiary Paris Agreement (PA, 2015) to cope with climate change-related *loss and damage*. In the early 1990s, some negotiators of the UNFCCC proposed means to address loss and damage that were not adopted. Now, many Parties and stakeholders view addressing loss and damage as the “third pillar” of climate action, along with GHG *mitigation* and *adaptation*.

Loss and damage was first adopted in a negotiated UNFCCC text at the 13th Conference of the Parties (COP13) in 2007, in Bali, Indonesia. Negotiations on “new funding arrangements” to address loss and damage began, for the first time, in November 2022 at COP27 in Sharm el-Sheikh, Egypt. While COP27 decided to establish “new funding arrangements” and “a fund,” these items are largely procedural: they call for a series of meetings and reports in 2023, with potential decisions among Parties to operationalize both the new funding arrangements and the fund expected at COP28 in November 2023. Many expect delivery of funding shortly thereafter, if not before.

Decisions that Parties make under the PA may lead to expectations that the U.S. government would pledge or provide funding to address loss and damage. Members of Congress may convey views to the executive branch about the merits, scope, structure, eligible recipients and uses of funds; criteria and priorities; and other choices that Parties are to consider in 2023 and beyond. Views may concern whether to authorize contributions to a fund or other means of assistance and/or whether to appropriate funding.

Sharm el-Sheikh: New Funding Arrangements Established and, in That Context, a Fund

At COP27, the Parties agreed to put on the conference agenda the issue of funding arrangements to address loss and damage associated with the effects of climate change.

Developing countries—the large majority of Parties—had insisted the meeting address the topic in order to proceed.

The Parties concluded two decisions with provisions regarding loss and damage: (1) the Sharm el-Sheikh Implementation Plan, and (2) a decision specifically regarding funding arrangements for responding to loss and damage. Among items in the latter, the Parties decided

to establish new funding arrangements for assisting developing countries that are particularly vulnerable to the adverse effects of climate change, in responding to loss and damage, including with a focus on addressing loss and damage by providing and assisting in mobilizing new and additional resources, and that these new arrangements complement and include sources, funds, processes and initiatives under and outside the Convention and the Paris Agreement; [and]

in the context of establishing the new funding arrangements [...], to establish a fund for responding to loss and damage whose mandate includes a focus on addressing loss and damage[.]

Two other initiatives were launched at COP27 to address loss and damage, the *Global Shield Against Climate Risks*, largely an insurance and capacity-building approach, and the United Nations Secretary General’s *Early Warnings for All*, to extend early warning systems to all countries, particularly in Africa.

Not Liability, Compensation, or Reparations

Despite portrayals by some stakeholders and media, the language in the Sharm el-Sheikh decisions does not connote new funding arrangements to be “liability,” “compensation,” or “reparations.” The U.S. delegation and others have consistently and successfully opposed inclusion of these concepts in negotiated texts. In the PA, Article 8 concerns loss and damage and emphasizes cooperation through the *Warsaw Mechanism for Loss and Damage Associated with Climate Change Impacts* (WIM). The Parties agreed in the corresponding 2015 decision to adopt the PA that “Article 8 of the [Paris] Agreement does not involve or provide a basis for any liability or compensation.” In accordance, the language agreed in Sharm el-Sheikh makes no reference to liability or compensation.

While some stakeholders, including some governments, continue to press for establishing compensation, liability, or

reparations under the UNFCCC, many do not, including many developing countries seeking assistance. Outside of the UNFCCC processes, nonetheless, several small island states are making efforts toward seeking legal judgments based on alleged liability under international law.

Sorting Out Existing and New Arrangements

The Sharm el-Sheikh decisions to establish new funding arrangements and a fund for loss and damage add to existing and past processes. One task for 2023 is to evaluate and propose relationships and coordination among them. Parties established the WIM in 2013 to enhance knowledge, dialogue, and action and to provide support for addressing loss and damage, including regarding risk management. While many Parties consider the WIM useful for developing and sharing information, many also view its functions—as instituted—to be limited, particularly in supporting actions to address loss and damage effectively.

Parties mandated the *Suva Expert Dialogue* in 2018 to explore information and views on ways to facilitate mobilization and securing of expertise and enhancement of support, including finance, technology and capacity-building to address loss and damage. Among its findings, the Suva report concluded that “[f]inancing should target disaster preparedness, including early action, so that policymakers move from a position of ‘risk responders’ to that of ‘risk managers.’” It highlighted the value of sustained investments to address challenges in risk assessment, local capacities, and intergovernmental coordination, among others. Regarding finance issues, it concluded that levels of finance were insufficient to implement risk reductions, along with the challenges of indebtedness of some developing countries and timing of financial flows following disasters. The Suva final report highlighted risk transfer and finance options, such as insurance, while noting issues of accessibility and affordability. It identified existing and potential financial mechanisms, including the Financial Mechanisms of the UNFCCC—the Green Climate Fund and the Global Environment Facility. Parties recognize that funds also have flowed through, and continue to flow through, humanitarian assistance and recovery efforts after disasters.

In 2019, Parties established under the WIM the *Santiago Network for Averting, Minimizing, and Addressing Loss and Damage*. Its role is to catalyze technical assistance to support approaches at the local, national, and regional levels to address loss and damage. The 2021 COP26 established the *Glasgow Dialogue* to “discuss the arrangements for the funding of activities to avert, minimise and address loss and damage.” While this dialogue continues, the pressure on negotiations regarding finance to address loss and damage led to the COP27 decisions to establish new funding arrangements and a fund.

The Sharm el-Sheikh decision provides that the “new arrangements complement and include sources, funds, processes and initiatives under and outside the Convention and the Paris Agreement.” The decision tasks a Transitional Committee with, among other things, “identifying and

expanding sources of funding” and “ensuring coordination and complementarity with existing funding arrangements.” It tasks the Secretariat with producing a report that identifies relevant existing funding arrangements and innovative sources, among other topics.

Potential Providers and Recipients of Funding

The COP27 decisions do not identify who might provide new and additional funding either through (1) the new funding arrangements “for assisting developing countries that are particularly vulnerable to the adverse effects of climate change” or (2) the fund established in that context. The COP27 decisions do not suggest that providing funding would be mandatory for any Party, which is consistent with other financial commitments under the UNFCCC.

Frequently cited potential sources of new funding to address loss and damage include governments of relatively high-income Parties, such as the United States and the European Union. Other proposed candidates include China, Saudi Arabia, and other countries that emit relatively high levels of GHG emissions either within their boundaries or indirectly through sales of fossil fuels. Additional candidates include nongovernmental sources, such as philanthropies, businesses, and others.

The language in Sharm el-Sheikh decisions appears to limit provision of new funding to developing countries (not defined under the UNFCCC) that are “particularly vulnerable” to the adverse effects of climate change. Many consider that such a scope would not include countries such as China. Options and perspectives may be elucidated in the 2023 processes and may be addressed in COP28 decisions.

Estimates of Loss and Damage Associated with the Adverse Effects of Climate Change

There is broad consensus among countries and experts that human-induced climate change is already resulting in losses and damages to humans and ecosystems. There is also broad agreement that some particularly vulnerable populations in developing countries have inadequate resources to avert or respond to loss and damage and that the magnitude of losses and damages may be impeding the development of some economies. There is not agreement on the magnitude of loss and damage under discussion in the UNFCCC framework. While estimates exist—some as high as several trillion dollars annually by 2050—many scope and methodological differences and questions remain. For example, how would future loss and damage be contingent on efforts to abate GHG emissions and to adapt to anticipated climate change? Which countries might be included in cost estimates? How could one attribute costs to climate change versus other contributing phenomena, such as growing populations in high-risk locations? The Intergovernmental Panel on Climate Change in 2022 called loss and damage estimates “highly speculative” until methodological questions are resolved.

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