

Oxford Climate Policy Blog

Initiating debates on international climate policy

The time is ripe ... for serious discussions on finance to address and indeed respond to L&D through a dedicated pilot fund

Contents [\[hide\]](#)

I. The Past

- a. Liability and Insurance
- b. The Warsaw International Mechanism (WIM)
- c. From Paris to Glasgow: 'avert, minimize and address'
 - The Paris Agreement
 - The Santiago Network

II. The Present

- a. Glasgow
 - From a Glasgow Loss and Damage Facility to the Glasgow Dialogue
 - Scotland leads the way
- b. Oxford: A Pilot Fund for Loss and Damage
- d. New York
 - "Denmark offers 'loss and damage' funding to poorer countries for climate breakdown"
 - "John Kerry Refuses to Feel 'Guilty' for Climate Change"

III. The Future

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I. The Past

a. Liability and Insurance

From the very beginning of Loss and Damage (L&D) deliberations in the multilateral climate change negotiations, there has been strong resistance by some Parties to face the issue of **responding** to L&D in financial terms, mainly for fear of demands for compensation, due to the anthropogenic nature of climate change: Climate change impacts are not acts of god, they are man-made, and as such imposed by people who consequently are responsible for them.

Thus in 2002, I argued^[1] that an existing neglect of impact response in general, and impact relief in particular has to be redressed by creating "a *Climate Impact Relief Fund* – based on the tried and tested models of

the OCHA Trust Fund for Disaster Relief and the Disaster Relief Emergency Fund of the International Federation of Red Cross/Red Crescent Societies – under the Framework Convention to cover the expenditures for international weather-related disaster relief and preparedness.”

In 2003 I followed up with a call for an “Adaptation and Impacts Protocol”,^[2] to provide not only binding commitments to sharing the burden of climate impacts, but also a statute of limitation for climate impact liability. He argued that it is not so much liability, but the spectre of *unlimited* liability which made L&D response a taboo to many Parties.

The same year saw the resurgence of interest in the idea of *insurance* as climate impact response measure leading to an interesting UNFCCC background paper^[3] discussing, inter alia, the “role of insurance and collective loss approaches withing compensation and liability.” The concept of ‘insurance’ was originally introduced into the negotiation of the Convention by AOSIS in 1991 as proposal to establish an *International Insurance Pool* (IIP).^[4]

Art 2 of the submission identifies five main questions to be considered in the formulation of the proposed IIP, namely:

- Methods of funding an IIP;
- Classification of the types of loss to be covered by the IIP;
- Criteria for establishing entitlements to claim against the IIP;
- Methods of evaluating loss resulting from sea level rise;
- Limitations on the amount of compensation payable by the IIP.

Unfortunately, the IIP did not make it into the Convention, and ‘insurance’ only has a cameo appearance in Art. 4.8, but the five key points identified in Art. 2 of the original AOSIS proposal remain absolutely fundamental for any approach to respond to L&D financially.

b. The Warsaw International Mechanism (WIM)

At COP18 (2012) Parties decided they would at COP19 establish “institutional arrangements, such as an international mechanism, including functions and modalities, ... as defined in paragraph 5 above, to **address** loss and damage associated with the impacts of climate change in developing countries that are particularly vulnerable to the adverse effects of climate change;”, with paragraph 5 referring to “enhancing action and support, including **finance**, technology and capacity- building, to **address** loss and damage ...”[emphasis added]. It is also worth pointing out that the in the same decision Parties are noting “that a range of approaches, methods and tools is available ...to **respond** to loss and damage”.^[5]

As tasked, COP19 did established the **Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts** (WIM) “to address loss and damage ..., including extreme events and slow onset events, ...”^[6] However, its terms of reference are all about *enhancing understanding of risk management, collecting and sharing of relevant data and information, fostering dialogue, providing technical support, facilitating the mobilisation of expertise and enhancement of support to strengthen existing approaches and facilitate additional approaches to address loss and damage.*^[7]

In short, no finance to address, let alone respond to L&D.

c. From Paris to Glasgow: 'avert, minimize and address'

The Paris Agreement

Art. 8 of the Paris Agreement is dedicated to the WIM. The preamble introduces what has since become an inseparable trinity when talking of L&D by referring to recognising the importance of "**averting, minimizing and addressing** loss and damage associated with the adverse effects of climate change".^[8] To the uninitiated reader this could appear to be simply an expression of the truism that emission mitigation and adaptation are key to reducing future adverse impacts, but what has happened is that references to 'addressing' loss and damage are now often regarded as illegitimate if not joined with 'averting' and 'minimising'. This deflection from focussing on 'addressing' – let alone 'responding' – was complemented in the adoption Decision 1/CP.21 with the agreement that Art. 8 "does not involve or provide a basis for any liability or compensation."

Given this, it is not surprising to find that the possible *areas of cooperation and facilitation to enhance understanding, action and support* referred to in Art. 8^[9] are – with the exception of *risk insurance facilities, climate risk pooling and other insurance solutions* – **not** (explicitly) **about responding to L&D**.

The Santiago Network

In 2019 in Madrid, the Parties reviewed the WIM and established "as part of the Warsaw International Mechanism, the Santiago network for **averting, minimizing and addressing** loss and damage ..., to catalyse the **technical assistance** ..."^[10]

And again, given the mandate of the WIM itself, it is not surprising that the functions of the Santiago Network adopted in Glasgow are all about 'catalysing' and 'facilitating', and that the closest to responding to L&D is in final function (as listed on the [UNFCCC website](#)): "*Facilitating, through catalysing technical assistance, ... access to action and support (finance, technology and capacity building) ..., relevant to averting, minimising and addressing loss and damage ..., including urgent and timely responses to the impacts of climate change,*"

II. The Present

a. Glasgow

From a Glasgow Loss and Damage Facility to the Glasgow Dialogue

To the best of my knowledge, the CMA [Glasgow Climate Pact](#) is the first cover decision of a UN climate conference that includes a dedicated section (IV) on L&D. While most of the paragraphs of this section keep to the "averting, minimizing and addressing" mantra, there are two notable, and I take it deliberate exceptions:

- 64. Urges developed country Parties, the operating entities of the Financial Mechanism, United Nations entities and intergovernmental organizations and other bilateral and multilateral institutions, including non-governmental organizations and private sources, to **provide enhanced and additional support for activities addressing loss and damage** associated with the adverse effects of climate change;
- 71. Acknowledges the importance of coherent action to **respond to the scale of needs caused by the adverse impacts of climate change**;^[11]

This is in my opinion a welcome step in the right direction and and worth highlighting. The actual decision on L&D funding taken in that Section was, sadly, less impressive. As reported in the [TWN Climate News Update No.17](#) (17 Nov. 2021), developing countries, at the outset of the Conference, tabled a draft decision recognizing “the need for a **financing stream** on loss and damage to ensure that developing country Parties are able to adequately address the significant impacts currently associated with **slow onset events, non-economic losses, comprehensive risk management, displacement, and other loss and damage-related issues**.”^[12]

On 11 November, after two days of inconclusive ministerial consultations developing countries textual proposals calling for the establishment of a “**Glasgow Loss and Damage Facility** under the Financial Mechanism ..., and to provide new financial support under Article 9 of the PA, in addition to adaptation and mitigation finance, to developing countries to address loss and damage and requests the Subsidiary Bodies to jointly undertake work in 2022 with the aim of providing recommendations to COP27 on its operationalization.”

Failing to obtain consensus for such a Facility, developing countries proposed instead “to launch a process to develop a **facility, fund or other financial arrangements** for providing financial support for loss and damage, through a subsidiary body, hereby established under the Convention, known as the **Glasgow Ad-Hoc Working Group on Loss and Damage Finance**.” This AWG was meant to commence work as a matter of urgency, and “produce a report with recommendations on the operationalization of a facility, fund or other financial arrangements, to be considered and adopted at COP27.” But even that did not succeed.

On 13 Nov, the final day of the Glasgow Climate Conference, Parties to the Paris Agreement decided merely to establish a “Glasgow Dialogue between Parties, relevant organizations and stakeholders to discuss the arrangements for the funding of activities to avert, minimize and address loss and damage associated with the adverse impacts of climate change, to take place in the first sessional period of each year of the Subsidiary Body for Implementation, concluding at its sixtieth session (June 2024)”^[13]

Scotland leads the way

The principal news that emerged from Glasgow on L&D funding was from the local host government. The First Minister of Scotland, Nicola Sturgeon, announced a trebling of the Scottish Climate Justice Fund to £36million, 2 million of which earmarked for L&D, stating that “every vulnerable or developing country I have spoken with has big ambitions for meeting the climate crisis but they do not have the funding for adaptation, for mitigation, or for tackling the loss and damage that is needed to deliver.”^[14]

b. Oxford: A Pilot Fund for Loss and Damage

On 7 September 2022, Michai Robertson, AOSIS lead finance negotiator, gave a presentation on [Funding Arrangements for Addressing Loss and Damage](#) to the Participants of the 2022 [ecbi Oxford Seminar](#).^[15] Michai “explained that, in 2022, the IPCC identified existing gaps in funding arrangements for L&D, which is not comprehensively addressed by current financial, governance, and institutional arrangements, particularly in vulnerable developing countries. [...] He went on to underscore that given the limits to adaptation, funding for L&D must be comprehensively addressed and any arrangement must be fit for purpose and serve both the Convention and the Paris Agreement, which includes a recommendation to enhance support on a cooperative and facilitative basis to address L&D, as well address gaps regarding the ability of current operating entities to adequately fulfil this aspect of the Paris Agreement. [...] He highlighted the need to understand four key elements: investment criteria, access, results management, and governance. Focusing on access, Robertson stressed understanding the way support must be received, as well as which entities are eligible to access such a fund such support, emphasizing grant-based support and commensurate urgency.”^[16]

Following Michai’s presentation, I told the Participants that in their pre-meeting, the developing country Fellow had put forward the idea of a Pilot Fund for L&D as a potential ‘common comfort-zone landing ground’ for the ongoing L&D negotiation. For more on this idea, see my other blog post on this topic: [“Elements of Pilot Loss and Damage Response Fund”](#).

d. New York

Two L&D related events in the course of the recent [NYC Climate Week](#) captured the attention of the press.

“Denmark offers ‘loss and damage’ funding to poorer countries for climate breakdown”

On 20 September, the Danish Minister for Development Cooperation Flemming Møller Mortensen announced that his government has “agreed to increase support for climate-induced losses and damage. I saw firsthand in Bangladesh in the spring that the consequences of climate change need increased focus. It is grossly unfair that the world’s poorest should suffer most from the consequences of climate change to which they have contributed the least. With this new agreement, we are putting our money where our mouth is and working across civil society, authorities, the private sector and experts to solve one of the greatest challenges of our time.”

According to the [Danish Press Release](#), the DKK 100m (EUR/USD 13m) funding is to include support for following activities:

- Support of DKK 32.5 million for the Ministry of Foreign Affairs’ strategic partnerships with civil society working with climate-induced losses and damage with a special focus on the Sahel region.
- Increased support to CISU by DKK 7.5 million The aim is to lift civil society actors in developing countries in their work to increase resilience to climate change.
- Support of DKK 35 million to insuResilience Global Partnership, which works to strengthen resilience in vulnerable countries through insurance schemes to cover risk, loss and damage in connection with climate-related disasters.

- A reserve of DKK 25 million will be set aside for strategic efforts within climate-generated losses and damage that can support the current climate negotiations leading up to and during COP27. The detailed activities will be fleshed out during autumn 2022.

“John Kerry Refuses to Feel ‘Guilty’ for Climate Change”

This was the heading of an article^[17] in *The New Republic* newspaper reporting about a *New York Times* event at which John Kerry “the U.S. climate envoy seemed to come unglued this week when Farhana Yamin, a veteran environmental lawyer and climate negotiator, asked him about funding for nations recovering from climate catastrophe.”

Kerry’s response was forthright and created quite some media waves: “In all honesty, the most important thing that we can do is mitigate enough that we prevent loss and damage. And the next most important thing we can do is help people adapt to the damage that’s already there. And [...] you tell me the government in the world that has trillions of dollars, cause that’s what it costs. I’m not going to take a—feeling guilty. There’s plenty of time to be arguing, pointing fingers, doing whatever. But the money we need right now needs to go to adaptation. It needs to go to building resilience. It needs to go to the technology that’s gonna save the planet.”

III. The Future

In his Politico article “[Denmark breaks ranks on paying for climate damage](#)”, Karl Mathiesen, former editor-in-chief of Climate Home News, contends that “The rich country defense is beginning to fray as the impacts of climate change grow more stark” and he points out there is a growing realisation of this in the EU and the US.^[18] The World Resources Institute, in turn, lists “Create a financing mechanism for addressing loss and damage” as the first of its [6 Key Tasks at COP 27](#), ending “In some good news, building on [commitments](#) made by Scotland and Wallonia (Belgium) and a group of philanthropies during COP26, Denmark [announced](#) in September 2022 a pledge of 100 million Danish Krone (approximately \$13 million) for loss and damage. The Climate Vulnerable Forum and the Vulnerable Twenty (V20) Group will also launch a [crowd-sourcing loss and damage funding campaign](#) in early October 2022. These are positive developments that underscore the need to elevate loss and damage at COP27.”

In the hope this will indeed happen, I have detailed my vision of what the idea mooted at the 2022 Oxford Seminar in a separate OCP post entitled “[Elements of Pilot Loss and Damage Response Fund](#)” which I hope will help to create a characterisation that lies within the comfort zone required for finding a landing ground for these negotiations.

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Notes

- 1 B. Müller, *Equity in Climate Change: The Great Divide*, Oxford, OIES, 2002.
- 2 B. Müller, Drexhage, J., Grubb, M., Michaelowa, A., and Sharma, A. [Framing Future Commitments: A Pilot Study on the Evolution of the UNFCCC Greenhouse Gas Mitigation Regime](#). Oxford OIES
- 3 [UNFCCC Insurance-Related Actions and Risk Assessment in the Context of the UNFCCC](#) Background paper for UNFCCC workshops – commissioned by the UNFCCC Secretariat May 2003
- 4 AOSIS. [A/AC.237/WG.II/CRP.8](#). Submission by Vanuatu on behalf of AOSIS to the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change Working Group II, at its 4th session, Geneva 17 December 1991.
- 5 Paras 2 and 9, [Decision 3/CP.18](#) (emphasis added)
- 6 [Decision 2/CP.19](#), para 1.
- 7 *Ibid.* para 5.
- 8 [Paris Agreement](#), Art. 8.1 (emphasis added).
- 9 “(a) Early warning systems; (b) Emergency preparedness; (c) Slow onset events; (d) Events that may involve irreversible and permanent loss and damage; (e) Comprehensive risk assessment and management; (f) Risk insurance facilities, climate risk pooling and other insurance solutions; (g) Non-economic losses; and (h) Resilience of communities, livelihoods and ecosystems.”[[Paris Agreement](#), Art. 8.4
- 10 [Decision 19/CMA.3](#), para 43.
- 11 [Decision 1/CMA.3](#), added emphasis.
- 12 Emphasis added
- 13 [CMA 2, Glasgow Climate Pact](#), para 72.
- 14 [Scottish Government, Press Release, 11 November 2021](#).
- 15 For a full account of Robertson’s presentation and the ensuing discussion, see the Seminar Report.
- 16 *Ibid.*
- 17 Kate Aronoff, [“John Kerry Refuses to Feel ‘Guilty’ for Climate Change”](#), The New Republic, 22 September 2022.
- 18 “The EU’s top climate envoy Frans Timmermans told [Le Grand Continent](#) journal last week that EU countries ‘must be prepared to spend a little more also on loss and damage caused by climate change, because that is what developing countries are asking for.’ The U.S. administration has also acknowledged that it needs to do

more, both in private diplomatic meetings and public statements. But it faces budgetary challenges, with Congress unwilling to back international climate aid.”

This entry was posted in Uncategorized on 17 October 2022 [<http://blog.oxfordclimatepolicy.org/the-time-is-ripe-for-serious-discussions-on-finance-to-address-and-indeed-respond-to-ld-through-a-dedicated-pilot-fund/>] by Benito Muller.

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